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96-7 AMEND REDEVELOPMENT ACT OF 1945

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HEARINGS AND MARKUPS

BEFORE THE

SUBCOMMITTEE ON
GOVERNMENT AFFAIRS AND BUDGET

AND THE

COMMITTEE ON
THE DISTRICT OF COLUMBIA
HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

FIRST SESSION

ON

H.R. 3336 and H.R. 4546

TO AMEND THE DISTRICT OF COLUMBIA REDEVELOPMENT
ACT OF 1945 (S.W. AREA PROJECT "C")

JUNE 19, 20 AND OCTOBER 24, 1979

Serial No. 96-7

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Committee on the District of Columbia



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AMEND THE REDEVELOPMENT ACT OF 1945

TUESDAY, JUNE 19, 1979

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT AFFAIRS AND BUDGET,
COMMITTEE ON THE DISTRICT OF COLUMBIA,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:32 a.m., in room 1310, Longworth House Office Building, Hon. Walter E. Fauntroy (chairman of the subcommittee) presiding.

Present: Delegate Fauntroy, Representatives Diggs, Harris, Daniel, and Fenwick.

Also present: Stephen Horblitt, subcommittee staff assistant; Elizabeth D. Lunsford, general counsel; James T. Clark, legislative counsel; Joyce F. Williams, staff assistant; and Harry M. Singleton, deputy minority counsel.

Mr. FAUNTROY. The Subcommittee on Government Affairs and Budget will come to order.

Our hearing this morning is on H.R. 3336, a bill to amend the District of Columbia Redevelopment Act of 1945, which will be included in the record at this point.

(The bill referred to, H.R. 3336, introduced by Mr. Fauntroy et al on Mar. 29, 1979, follows:)

[H.R. 3336, 96th Cong., 1st sess.]

A BILL to amend the District of Columbia Redevelopment Act of 1945, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 12 of the District of Columbia Redevelopment Act of 1945 (D.C. Code, sec. 5-711) is amended by deleting the first proviso thereof and substituting therefor the following: "*Provided, That any such modification which affects the use or development of an area or part thereof which has been sold or leased, as governed by the area redevelopment plan as theretofore approved, shall not become effective as to such area or part without the consent in writing of the purchaser or lessee thereof.*"

(b) The amendment made by this section shall be effective with respect to any approved project area redevelopment plan, regardless of the effective date or date of approval of such plan.

Sec. 2. In implementation of the authority reserved under section 21(a) of the District of Columbia Redevelopment Act of 1945 (D.C. Code, sec. 5-718(a)), the Congress hereby amends the urban renewal plan for Southwest urban renewal area project "C" by adopting and approving the following modifications to the plan:

(1) amendment numbered 22 (pertaining to parcel 76), as adopted by the National Capital Planning Commission on March 7, 1974, and approved by the Council of the District of Columbia on May 7, 1974; and

(2) amendment numbered 23 (pertaining to parcel D-2-B), as adopted by the National Capital Planning Commission on May 30, 1974, and approved by the Council of the District of Columbia on August 30, 1974.

Mr. FAUNTROY. The purpose of H.R. 3336 is to clarify an ambiguity in the District of Columbia Redevelopment Act of 1945 and to approve

certain amendments to the urban renewal plan for southwest urban renewal project area C in the District of Columbia.

Presently, the provision regarding modification of an approved project for the Redevelopment Land Agency is unclear. The ambiguity is whether consent is required from all owners and lessees of property in the area who may deem themselves affected by the modification, or whether consent is required only from the particular owner or lessee of the property whose planned use is being modified.

The bill would amend the District of Columbia Redevelopment Act of make it clear that only the owner or lessee of the particular parcel of land whose use is being modified is required to give consent under the statute.

In addition, the bill approves two urban renewal plan amendments in Southwest Washington by (1) authorizing a low- and moderate-income housing development, and (2) a waterfront end-extension project.

Without objection, we will incorporate into the record by reference, the hearings held on identical legislation—H.R. 10311—in the last Congress, the 95th Congress, which incidentally passed the House but was not acted upon by the Senate before adjournment. We should like also to incorporate in the record at this point, by reference, the report—House Report 95-1324—of the committee in that 95th Congress on H.R. 10311.

[See hearings and markups on “Amend Redevelopment Act of 1945,” H.R. 10311, 95th Congress, 2nd session, April 18, June 20 and 27, 1978, serial No. 95-16, House Committee on the District of Columbia, and subcommittee thereof on Fiscal and Government Affairs; together with the committee report on H.R. 10311, namely, H. Rept. 95-1324.]

[Also, a section-by-section analysis of H.R. 3336 by the staff follows:]

STAFF SECTION-BY-SECTION ANALYSIS AND BACKGROUND OF H.R. 3336

Section 1

(a) Any modification to an approved urban renewal plan which affects the use or development of an area or part shall not become effective without the written consent of the purchaser or lessee of the modified area or part.

(b) This section shall apply to any approved plan, regardless of the effective or approval date of such plan.

Section 2

In accordance with the authority reserved under the D.C. RLA Act of 1945, Congress amends Southwest Urban Renewal Plan C as follows:

- (1) Parcel 76 is changed from quasi-public (church and school) use to subsidized low- and moderate-income housing.
- (2) The Channel Inn is allowed to expand from 100 to 150 rooms.

BACKGROUND OF H.R. 3336

In 1974, prior to Home Rule, the District of Columbia Redevelopment Land Agency (RLA) amended, in accordance with the RLA Act of 1945,¹ the South-

¹ D.C. Code § 5-711 provides: An approved project area redevelopment plan may be modified at any time or times: *Provided*, That any such modification as it may affect an area or part thereof which has been sold or leased shall not become effective without the consent in writing of the purchaser or lessee thereof: *Provided further*, That such modification may be effected only through adoption by the (National Capital) Planning Commission and subsequent submission to any approval by the District of Columbia Council, as hereinafter provided. Before approval, the District Council shall hold a public hearing on the proposed modification after ten days' public notice.

west Washington Urban Renewal Project Area C to (1) allow low- and moderate-income housing to be built on land previously planned for a church and (2) allow the Channel Inn to expand from 100 to 150 rooms.

L'Enfant Plaza Properties, Inc. and a group of homeowners brought suit against RLA alleging that under the law, modifying an approved plan requires that the written consent of all landowners or lessees within the project area be obtained before the change can be approved.

The RLA argued that only the owners or lessees whose property is being modified need sign a consent. For those likely to be affected by the change—other property owners in the project area—the law requires they be mailed a notice of a public hearing by the D.C. Council. The RLA contends that since Congress specifically provided that neighboring landowners be heard, via public hearing, Congress did not intend that the owners be required to give consent.²

The District Court granted RLA's motion for summary judgment and dismissed the complaint. The homeowners and L'Enfant Plaza appealed and the suit was reversed and remanded back to the courts for trial. The judge ruled that the intent of Congress concerning plan modifications was not clear.

A full trial of the issues was held over the course of two weeks before Judge Harold Greene. The hearings concluded May 3, 1979 and full closing arguments were made to Judge Greene on June 8. Judge Greene now has the case under advisement and will issue a decision in the future. An appeal from Judge Greene's decision is possible and even considered likely.

The act, as written, provides that an approved urban renewal plan may be changed at any time provided that the change, as it may affect an area or part thereof, shall not become effective without the consent in writing of the purchaser or lessee. In addition, any change must be approved by the District of Columbia Council after a public hearing and the National Capital Planning Commission.

However, the court has ruled that the intent of Congress in this matter is not clear. Appellants contend that all landowners or lessees in an approved plan must sign consents, while RLA argues that only the owners or lessees whose property is being modified are required to consent.

The purpose of the bill is to clarify congressional intent and to approve two changes to Southwest Urban Renewal Project Area C.

Mr. FAUNTROY. Our first witness this morning is our distinguished colleague, the chairman of the Banking, Finance and Urban Affairs Committee of the House, and a resident of the District who has been long a supporter of our right to self-determination here, our friend, the Honorable Henry S. Reuss.

Congressman Reuss, it is a real pleasure to have you, and you may proceed as you wish.

STATEMENT OF HON. HENRY S. REUSS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Mr. REUSS. Thank you, Mr. Chairman. It is an honor for me to be associated once again in a work, which, I think, is a serviceable one, with you, who have done so much for the country and for the District of Columbia, which you so magnificently represent.

I have a seven-page prepared statement, which with the Chair's permission, I would like to submit, which will enable me to proceed a little more rapidly.

The CHAIRMAN. Without objection, the statement will be included in its entirety in the record at this point; and you may proceed to testify.

² Congress expressly reserved to itself the right to modify urban renewal plans if it so chooses.

[Prepared statement of Congressman Reuss follows:]

STATEMENT OF REPRESENTATIVE HENRY S. REUSS

Mr. Chairman, I make this statement in support of H.R. 3336 in four different capacities. First, I am a sponsor of H.R. 3336, and delighted to be such. I therefore have a few things to say about the substantive contents of the bill.

Second, as Chairman of the House Committee on Banking, Finance, and Urban Affairs, and as chairman of its Subcommittee on The City, for many years I have been deeply concerned about the quality of life in our nation's cities. The bill before your subcommittee, while directly affecting only the District of Columbia, presents an important problem of national housing policy in microcosm, and some of my remarks are directed toward that aspect of the bill.

Third, I am speaking as a concerned Member of Congress about a question statutory ambiguity which the courts have called to our attention. There is an ambiguous section in the District of Columbia's urban renewal statute, D.C. Code § 5-711, which the courts have asked us to correct. This legislation is designed to accomplish that purpose.

Last, H.R. 3336 will affect the Southwest Washington, D.C., urban renewal area, where I live when I am not back home in Wisconsin. I therefore have a personal viewpoint on this legislation, which is not merely a piece of armchair urban planning affecting other people's lives.

As to the bill itself, my distinguished colleague Mr. Fauntroy has stated that the legislation will correct ambiguity in the District of Columbia's urban renewal statute. The language of section 5-711 of the District of Columbia Code is unfortunately, vague on the question of whose consent is required to validate urban renewal plan amendments. I would like the record of this bill to clearly reflect that in adopting this legislation, Congress is expressing its view that at all times the proper interpretation of section 5-711 has been that only the re-developer of the particular parcel of land dealt with in an urban renewal plan amendment is required to consent to the change.

A particular set of facts has shown the need for this clarifying legislation. In 1974, the District of Columbia Council approved an amendment to the Southwest urban renewal plan, under which one portion of the Southwest area, known as parcel 76, would be used for low and moderate income housing. Litigation was filed to block that amendment. Several months later the Council approved another amendment, permitting a Southwest Washington waterfront developer to add fifty rooms to an existing motel. No one opposed that amendment before the District of Columbia Council, but the parcel 76 litigation was nevertheless revised to challenge the motel amendment, too. Apparently, this was to show that the parties who filed the suit were not simply against low and moderate income housing. Despite that action, however, the parcel 76 litigation disturbingly resembles a dispute of the "build-it-anyplace-else-but-here" variety.

By enacting this legislation, Congress will be making it clear that the District's urban renewal statute was not intended to prevent the construction of much-needed housing, or to obstruct commercial redevelopers in reaching their full business potential. Quite the opposite is the case.

CONGRESSIONAL INTENT

Furthermore, based on my 23 years of service in the Congress, I think it is fair to say that Congress would not intentionally create an urban renewal plan so unworkable as to require the consent, potentially, of every property owner in an urban renewal area for every plan amendment. I also know that Congress would not intentionally delegate to an undefined class of private parties the standardless power to veto urban renewal amendments on other people's property through the withholding of consent to changes by which they might deem themselves "affected." This is especially true after the District of Columbia Council has approved the changes in proceedings giving the public a right to make their views known.

The United States Court of Appeals for the District of Columbia has already stated that the language of section 5-711 is "ambiguous on its face." The same decision envisions that Congress could determine "to amend section 5-711 or to exercise its retained powers under section 5-718." This legislation does both.

The first part of the bill clarifies section 5-711 as applicable to pending as well as future urban renewal plan amendments. Section 2 of H.R. 3336 also exercises the power Congress reserved under section 5-718 of the District of Columbia Code to approve specific urban renewal plan amendments. The amendments approved in the second section of the bill are the two amendments that are currently stalled because of the parcel 76 litigation. Congress has exercised such authority before in another controversial situation, adopting the urban renewal plan amendment for the Eisenhower Memorial Civic Center, the authority for which is now codified in 40 U.S.C. § 616(b) (2).

This legislation will remove any need for courts to guess about the intention of Congress. This will not be the first time Congress has taken such action. For example, in 1973 the United States Court of Appeals for the District of Columbia ruled that the land use plan required under § 5-414 of the District of Columbia Code was not the same as the "comprehensive, consistent, and coordinated plan for the National Capital" which Congress directed the National Capital Planning Commission to prepare under D.C. Code § 1-1004(a). Congress promptly resolved the question by amending D.C. Code § 5-414 in Public Law No. 93-198, § 492(b) (1), to make it clear that the plan referred to in § 5-414 was in fact the "comprehensive plan for the National Capital" referred to in § 1-1004(a). Legislation such as H.R. 3336 should also validly be applicable to pending litigation. In § 408(e) of the Fair Credit Billing Act, to cite another similar situation, certain liability provisions were made applicable to all claims which had not yet finally determined by a court of competent jurisdiction.

H.R. 3336, in short, is intended to have a settling effect. Simply stated, this legislation seeks to assure that vitally-needed housing in the District of Columbia will be built as promptly as practicable.

HOUSING NEEDS

That leads me to my second point—my concern with national housing policy. It should be our goal to ensure that low, moderate and high income housing are as fully intermixed as practicable in our urban renewal areas. This is what the present development plan for parcel 76 seeks to accomplish. In essence, it never was a goal of the urban renewal program—in the District of Columbia or anywhere else—to wipe out slums only to create enclaves of privilege in their place.

Unfortunately, however, many urban renewal programs simply cleared neighborhoods with the physical characteristics of slums in a perfunctory manner, and indiscriminately scattered their social problems across our cities. The solution, I suggest, includes many factors, some of which are:

Central city residents should be within walking or easy commuting distance of their jobs.

Downtown service industries should accept the responsibility of providing employment opportunities for central city residents who live nearby.

Our new-towns-in-town should be something like urban laboratories, in which the mix of lower income and higher income housing permits a balance and integrated community.

A better cultural and economic mix is necessary in our cities. Urban renewal should not result in the eviction of lower income city residents solely to make way for the return of the affluent. Each city must insure that decent homes at affordable costs are made available to displaced persons in cadence with rehabilitation. Best of all, there should be planning so as to insure that neighborhoods stay multi-income.

This is the principal effect of the proposed use of parcel 76. That is why I favor so strongly the legislation which will implement it. The District of Columbia should be a model city, setting an example for the rest of the nation. We should lead the way here in carrying out the goals of national housing policy, by demonstrating that the solutions to urban problems we propose can be and are effectuated.

Last, as I mentioned, I am a resident of Southwest Washington. I look forward to the day when the low and moderate income housing authorized for parcel 76 by the District of Columbia Council on May 7, 1974, is in place and operating. I will welcome that enterprise to the Southwest community.

But it has been five long years since the District of Columbia's City Council approved this housing, and parcel 76 is still vacant. In the interval, the housing could have been built, and people could be living in it now. This is too long a

period of time for the legitimate actions of the District of Columbia government—and the goals of national housing policy—to be frustrated. The delay itself may be symptomatic of a general problem in urban renewal programs.

I am therefore pleased that something specific and concrete can be done by the Congress on a short-term basis to get this project moving again. The promptest possible consideration and passage of this legislation will demonstrate our commitment to see that urban problems in our nation's capital, and elsewhere, are dealt with on an expeditious basis.

Let me close by expressing my sincere appreciation, Mr. Chairman, for the opportunity of making this statement to your subcommittee.

Mr. REUSS. I am here wearing a number of hats this morning. First of all, I am honored to be a cosponsor of H.R. 3336.

Second, as chairman of the House Banking and Urban Affairs Committee and of its Subcommittee on the City, I am concerned about our American cities; concerned that they are not embedded, so to speak, in concrete and unable to change with changing conditions; concerned, too, that people of different income levels may live harmoniously together, and that our cities not be a group of enclaves setting one income group against another.

Third, I speak as a Member of Congress who, whenever he has a chance to clean the Augean stables of an ambiguous statute, is ready to do his bit to do so, and here is an ambiguity fairly crying out for rectification, which indeed the court of the District of Columbia, the U.S. court, has besought us to do.

And finally, I happen to live in Southwest Washington, when I am not home in my district in Wisconsin. So, I have a personal view on the legislation.

As you have just said, Mr. Chairman, this will correct an ambiguity in the District of Columbia's urban renewal statute. That basic law, which I do not think is all that ambiguous, says, in effect, that where the plan for Southwest Washington, one-fourth of the city, is changed, affected persons have the right to veto it. What that obviously means is that if you are the owner of a parcel in, let us say, Southwest Washington which is zoned commercial and residential, in the alternative, and if the city bothers in their wisdom to change it so that it is just zoned residential, which would have some effect on the value of your property and on the reasons why you bought it, you have the right to due process to be heard and perhaps to even veto it. Those are perfectly good provisions.

However, the L'Enfant Plaza interest and the Rockefeller interest who own L'Enfant Plaza Hotel, have sought to have the court read it otherwise because they are sitting there with their L'Enfant Plaza Hotel several miles from a rival motel which is doing a good job and which seeks to add some 50 rooms, which would be harmonious, and across a freeway in some additional distance from a plot of land where, for the last 7 or 8 years, the community in Southwest Washington has sought to build a low- and moderate-income housing project, there being a definite need for that in a community where there tends to be nothing between public housing for the very poor and luxury apartments for the quite affluent.

The reason the change of plan came to pass is this: The land on which parcel 76 is located is right next to St. Dominic's Catholic Church. It was St. Dominic's, you will recall, where Lucy Johnson

received instructions from the Catholic faith and ultimately joined it. She referred to them as my little dominicans. I knew those wonderful priests well and found them of normal height, but maybe to someone from the expansive State of Texas they seemed diminutive in stature. At any rate, the good Dominicans, having in the plan, a church school on parcel 76, determined about 10 years ago that the school was unnecessary, and they, therefore, tendered back the plot to the District of Columbia for such disposition as the District would make. And the District, following closely all its legislative processes through the Redevelopment Authority and through the District Council and all the other instruments of city action, determined that it indeed would be a good thing to permit low-moderate income housing, very badly needed, on the site rather than an unneeded church school, and so ordained by law. And then enters L'Enfant Plaza and the Rockefellers and sought to clobber this worthy attempt, and they have been enormously successful, so far. They have, in fact, tied the thing up in litigation. It is now back in District court for lengthy and interminable hearings on just exactly what Congress might have had on its mind back in 1954 when it passed the urban renewal law.

DISTRICT OF COLUMBIA COURT OF APPEALS DECISION¹

But meanwhile, the Circuit Court of Appeals for the District of Columbia expressly invited Congress to make clear its intents, about which admittedly there is some ambiguity, either by an intent making clear statute or by a new statute—it did not matter to the court either way—saying that yes, of course, this change could be made and that the only people who could, by law, veto the change are those immediately affected, the owner of the lot itself. That was the Dominican Church which heartily approved the project, thought it was a good thing.

So, this bill was drawn up in order to carry out the will of the court. And in the last session of Congress, toward the end, H.R. 10311 was fully considered by this committee, favorably reported and favorably acted upon on the floor. Unfortunately, in the end of session rush, it was not acted on by the Senate. But it becomes more necessary than ever because the social polarity of Southwest Washington, unfortunately, continues. There is nothing there but high-rise, affluent apartments and townhouses and public housing. That is not good community building. Congress never intended it. Congress is now constantly engaged in doing just the opposite in seeing that our cities, old and new, have a decent population mix.

And so, in short, I hope that this great committee will once again put its mind on the subject and come with the same excellent conclusion it came to the last time. And this time, I have some suggestions that have been made to me that the Senate will be able rather promptly to act on it, so that we can put an end to this process once and for all.

Mr. FAUNTROY. Thank you so much, Mr. Chairman, for your very fine summary really of the history of the development of this situation and the legislation designed to address it.

¹ *L'Enfant Plaza Properties, Inc. v. D.C. Redevelopment Land Agency.*

PARCEL 76

What, in your judgment, is the principal effect of the proposed use of parcel 76 under the original plan?

Mr. REUSS. It does what the original plan really should have done. The original plan should have seen to it that there are adequate supplies of middle-income housing opportunities in this one-fourth of the city, Southwest Washington. The outfit that, for the last 7 or 8 years, has been under contract to build this housing project once it gets the green light, is the National Housing Partnership, a bipartisan, non-profit organization set up by the Congress, which operating essentially as a private developer has done so much good throughout the country in building just this sort of a middle-income project. It is rightly said that middle-income people in this country are those who are forgotten. Very poor people get public housing and welfare payments and food stamps. More affluent people get mortgage and interest payment deductions on their homes and get all sorts of tax exemptions, which in their high bracket, are of inestimable benefit to them.

It is the great middle class of this country which is concerned that it is somehow lost between the two stools. So I would envisage that the place in the firmament be occupied by parcel 76 would be as a provider of something for the middle class by way of housing and an improver thus of the social mix.

CONSENTS REQUIRED

Mr. FAUNTROY. You indicated in your remarks that in your judgment the law as written was intended to give consent to those who were directly affected who may have acquired the property under the assumption that the plan adopted was, in fact, going to be implemented.

I have been reading the D.C. Code, Title 5, Section 74 on the modification of redevelopment plans. Let me just share it with you again.

An approved project area redevelopment plan may be modified at any time or times; *Provided*, That any such modification as it may affect an area or part thereof, which has been sold or leased shall not become effective without the consent in writing of the purchaser or lessee thereof.

Is that the reference to which you were calling our attention?

Mr. REUSS. Yes, Mr. Chairman. And the operative words that you just read are affected. It could not be. Congress occasionally does some things that may be a little unwise. But it could not be that this great body really, in possession of its senses, would have enacted a law 25 years ago which said that any whimsical, capricious act by an owner of a 2-by-4 plot of ground three miles distance from the plot that was sought to be changed by the District could block that change. That would mean there never could be change.

And so like gathering swine, we would run toward the abyss in Southwest Washington. Congress could not have meant that.

Mr. FAUNTROY. So you see no ambiguity in this statement?

Mr. REUSS. I really do not. I think that the court, with deference, erred and should have said, no, L'Enfant Plaza is not person affected any more than somebody living up in Chevy Chase is affected. L'Enfant Plaza and its lawyers can not be blamed for their acquisitive

instinct for the fact that they want to stop the rival hostelry several miles away from putting in an extra 50 rooms. If they had their will, I suppose they would love to stop further building of all hotel rooms in the greater Washington area. But the mere fact that they are possessed, or even over possessed of this acquisitive instinct, should not cause the city of Washington and its Southwest Washington quadrant to remain helpless and contemptible.

EFFECT OF RETROACTIVE FEATURES

Mr. FAUNTROY. As some of our colleagues in the House may wonder what the possibilities are that the courts may overthrow the congressional action as being unconstitutional because of its retroactivity, I wonder what your view of that possibility is.

Mr. REUSS. Nil, Mr. Chairman. The Congress, in the case of the Eisenhower Memorial Civic Center and in several other cases, has indicated that retroactive clarification is entirely within its powers. But let us assume that I am mistaken; at least, the court would have a clear case in which to determine the constitutionality of this action.

I do not know whether the L'Enfant people and the Rockefellers would have the consummate gall to continue their dilatory litigation and prolong this thing. But if they did, I would be quite confident that the courts, up to and including the Supreme Court, in an expedited procedure would waive them to one side and allow the law of Congress to proceed.

To say otherwise is to say that one-fourth of the city of Washington is locked in concrete and can never change. That is the way of death. I am sure the court would not say that.

Mr. FAUNTROY. You know that there is a decision pending pursuant to hearings held just this month, closing this month, and I wonder, in your judgment, what the effect of the pending and ongoing litigation will be upon this legislation, and whether or not we should defer this legislation until after litigation is concluded?

Mr. REUSS. I think just the contrary, Mr. Chairman. The Congress did the right thing a year ago—the House did—in passing this measure. The district court is only pursuing its feckless inquiry into what might have been the intent of Congress in 1954, sort of a postmortem sight to analytic examination of Congress. Because the Congress did not act and Congress can put the lawsuit out of its misery very quickly by acting, which is what the circuit court wanted us to do. It sent the matter back to the district court only if Congress proved impotent and unable to act. The House, at least, has shown that it is not.

EFFECT OF DELAY IN THIS AREA

Mr. FAUNTROY. What do you think will be the effect of delaying the modification of the plan for housing programs in the District of Columbia.

Mr. REUSS. Precisely what L'Enfant Plaza and the Rockefellers want. They hope that the proponents of parcel 76 moderate-income housing plan will become discouraged and somehow dry up and blow away. Its effect on other people in the District who want to see the District make a comeback and become a good place to live for

moderate-income people as well as for the very rich and the very poor would likewise be discouraged if Congress walked by on the other side.

Mr. FAUNTROY. Thank you so very much, Mr. Reuss. I am particularly grateful to you for your answers on the questions of whether we should move ahead of litigation on this question, and whether the retroactive nature of our bill would, in any way, infringe upon the constitutional rights or be a violation of the Constitution. And I would like to submit for the record at this point a briefing statement which you provided us last year dealing with the question of clarifying congressional intent retrospectively as being constitutional and where you dealt with the whole question of dependency of litigation, indicating that it does not render retrospective legislation unlawful.

[The brief referred to follows:]

BRIEF OF REPRESENTATIVE HENRY S. REUSS

The clarifying language of H.R. 10311, made applicable to previously adopted urban renewal plan amendment, is of unquestionable constitutional validity:

A. Legislation clarifying congressional intent retrospectively is constitutional.

B. The pendency of litigation does not render retrospective legislation unlawful.

C. Legislation enacted pursuant to reserved powers, which preserves administrative flexibility is constitutional.

The alleged "retroactivity" of Congressional legislation is of concern only to the uninformed. Congress frequently enacts legislation of retrospective force.¹ Only in the rarest cases, when the legislation directly destroys specific, vested property rights,² is the legislation unlawful. To put the matter in general perspective, the Supreme Court has stated, *Continental Illinois Nat'l Bank v. Chicago, Rock Island & P. Ry. Co.*, 294 U.S. 648, 680 (1935):

"Congress, while without power to impair the obligation of contracts by laws acting directly and independently to that end, undeniably, has authority to pass legislation pertinent to any of the powers conferred by the Constitution however it may operate collaterally or incidentally to impair or destroy the obligation of private contracts."³

A. LEGISLATION CLARIFYING CONGRESSIONAL INTENT RETROSPECTIVELY IS CONSTITUTIONAL

The leading case upholding the power of Congress to clarify its intent with retrospective force is *Federal Housing Administration v. The Darlington, Inc.*, 358 U.S. 84 (1958). That case involved § 10 of the Veterans' Emergency Housing Act

¹ Looking just to Congressional enactments affecting the District of Columbia, this proposition is amply demonstrated. Thus, in section 6 of P.L. 86-654, 74 Stat. 519 (86th Cong., 2nd Sess.), the District of Columbia Employee Non-Liability Act, Congress expressly withdrew from the effect of pending litigation the individual liability of District employees at fault in automobile collisions occurring within the scope of their employment. This enactment was sustained as constitutional, *Rohrback v. Goff*, 197 F. Supp. 670 (D.D.C. 1961). In *Kindelberger v. Lincoln National Bank*, 155 F. 2d 280 (D.C. Cir. 1946), the court approved the retrospective application of an amendment to the D.C. Code providing that the proceeds of life insurance policies payable to deceased beneficiaries were to go to the beneficiaries' heirs, even though the insurance policies in question were issued prior to the enactment. The court stated, 155 F. 2d at 286, "The Constitution does not forbid retrospective laws merely because of the retrospective aspect, and whether a statute operates retrospectively or only prospectively, depends on the legislative intent." Similarly, in *Tipping v. Tipping*, 82 F. 2d 828 (D.C. Cir. 1936) (en banc) the court upheld the constitutionality of an amendment to the D.C. Code making desertion a ground for divorce, even as applied to conduct antedating the amendment.

² The possibility of unconstitutionality arises not under the "obligation of contracts" clause, which is applicable only to the States, nor the "*ex post facto*" clause, which applies only to penal and criminal statutes, *Calder v. Bull*, 8 Dall. 386, 393 (1798), but as a matter of Fifth Amendment due process. Thus, in *Louisville Bank v. Radford*, 295 U.S. 555 (1935), the Supreme Court invalidated legislation which directly destroyed a bank's right to resort to property under a mortgage, as a taking of property without due process of law.

³ The Court stated further, *ibid.*, " . . . under the express power to pass uniform laws on the subject of bankruptcies, . . . legislation is valid though drawn with the direct aim and effect of relieving insolvent persons in whole or in part from the payment of their debts." [Emphasis added.]

of 1946, 60 Stat. 207, 214, and the implementing regulations issued by F.H.A., which were intended to provide residential housing for veterans after World War II. The regulations provided that mortgage insurance was to be issued to projects "designed principally for the residential use," and in 1949 F.H.A. approved insurance for The Darlington. That building, however, contained a number of transient units, a problem which appeared in a sufficient number of cases to motivate Congress nine years later to clarify its intent by enacting § 513 of the National Housing Act, 68 Stat. 610, 612, stating:

"The Congress hereby declares that it has been its intent since the enactment of the National Housing Act that housing built with the aid of mortgages insured under that Act is to be used principally for residential use; and that this intent excludes the use of such housing for transient or hotel purposes while such insurance on the mortgage remains outstanding."

The Darlington's owners, citing over a dozen instances in which F.H.A. had previously approved rental schedules for transient accommodations, attacked the clarifying legislation as unconstitutional. The Court, however, rejected this attack, stating, 385 U.S. at 91:

"The Constitution is concerned with practical, substantial rights, not with those that are unclear and gain hold by subtle and involved reasoning. Congress by the 1954 Act was doing no more than protecting the regulatory system which it had designed. Those who do business in the regulated field cannot object if the legislative scheme is buttressed by subsequent amendments to achieve the legislative end."

That is precisely what Congress is doing in H.R. 10311. Section 5-711 of the D.C. Code has been declared ambiguous by two courts. The opponents of H.R. 10311 claim they have a right, under this ambiguous statute, to veto any urban renewal amendment which does not please them. As in *Darlington*, they claim the support of administrative interpretations allegedly favoring their view. Yet the Supreme Court rejected these chimeras, holding that Congress' power to clarify its intent and protect its regulatory system—a concern which is as vital to the District's urban renewal process as it was in the analogous field of veterans' housing—prevails over vague constitutional attacks based on "retroactivity."

A similar result was reached in *Fleming v. Rhodes*, 331 U.S. 100 (1947), which involved the applicability of the Price Control Extension Act (approved July 25, 1946) as a ground for staying state court eviction judgments obtained after the expiration of prior price control legislation but before the approval of the new act. To remedy this problem, Congress had declared in § 18 of the new law, "The provisions of this Act shall take effect as of June 30, 1946" (the expiration date of the prior price control act). The new legislation was contested on the grounds of unconstitutional retroactivity, but the Supreme Court stated, 331 U.S. at 107:

"Federal regulation of future action based upon rights previously acquired by the person regulated is not prohibited by the Constitution. So long as the Constitution authorizes the subsequently enacted legislation, the fact that its provisions limit or interfere with previously acquired rights does not condemn it. Immunity from federal regulation is not gained through forhanded contracts. Where it otherwise the paramount powers of Congress could be nullified by "prophetic discernment." [Footnote omitted.]

Thus, whether one views the claims of H.R. 10311's opponents as arising under a vague statute, or under some contractual theory, Congressional legislation can validly operate in a retrospective fashion.

B. THE PENDENCY OF LITIGATION DOES NOT RENDER RETROSPECTIVE LEGISLATION UNLAWFUL

Congressional legislation is sometimes employed to correct faults or defects which were not perceived clearly at the time of the enactment but which become apparent with the passage of years. In that time period, of course, claims or rights of parties may have intervened or become involved in litigation. The remedial legislation is often attacked as being "unconstitutional" or "retroactive," but the pendency of litigation, or even its final determination, do not make the new legislation unlawful.

In *Paramino Lumber Co. v. Marshall*, 309 U.S. 370 (1940), the Court considered an attack on a private Congressional bill for relief of a longshoreman, whose injuries did not all become apparent until after his initial Longshoremen's and

Harbor Workers' Compensation Act claim had been finally settled. The Court viewed the prior legislation as expressing in a faulty manner Congress' intent to compensate longshoremen, and approved the new act providing for reconsideration of the longshoreman's claim despite the fact that it was barred under the old legislation. The Court stated (309 U.S. at 197), "It is unimportant whether the claim persisted after the bar or ended with the running of limitation. To cure a fault of administration Congress may validly enact this act."

No more did the pendency of litigation affect the result in *Fisch v. General Motors Corporation*, 169 F. 2d 266 (6th Cir. 1948), *cert. denied*, 335 U.S. 902 (1949). *Fisch* involved Congressional legislation⁴ which was specifically intended to eliminate employer liability under the Fair Labor Standards Act and to deprive all state and federal courts of jurisdiction over certain wage claims filed under that Act, despite the fact that many such claims were then pending in court. The court brushed aside the contention that the amendatory legislation was unconstitutional, stating,

"It is urged that the Portal-to-Portal Act is retroactive and applies to plaintiff's causes of action. This in some respects is undoubtedly true but retroactive laws are not prohibited by the Constitutional in civil cases. We have no power to declare them void upon that ground alone."

It is apparent, therefore, that the pendency of litigation concerning the subject on which Congress is legislating constitutes no bar whatsoever to the validity of H.R. 10311.

C. LEGISLATION ENACTED PURSUANT TO RESERVED POWERS, WHICH PRESERVES ADMINISTRATIVE FLEXIBILITY, IS CONSTITUTIONAL

Even without the prior arguments, the District of Columbia's urban renewal statute (D.C. Code § 5-701, *ff.*) is uniquely subject to the control of Congress both because of Congress' constitutional role as the ultimate legislative body for the District of Columbia, and because of the express reservation of power by Congress in D.C. Code § 5-718(a) to adopt any amendment to an existing urban renewal plan it sees fit, at any time.⁵ All property-owners in an urban renewal area are subject to the effect of this reserved power, and such amendments as Congress may adopt under its authority.

The unique effect of such a reservation of power on the constitutionality of legislation dealing with what otherwise might be viewed as "accrued rights" is demonstrated in *Flemming v. Nestor*, 363 U.S. 603 (1960), which involved a legislative withdrawal of Social Security benefits under criteria which did not exist at the time the benefits were earned. In the Social Security Act, similar to the District's urban renewal statute, Congress reserved "[t]he right to alter, amend, or repeal" any provision of the Act, 49 Stat. 648.

Section 1 of H.R. 10311 does not even go as far as the legislation under consideration in *Flemming v. Nestor*; it deprives no one of monetary benefits, or takes anyone's property, or does anything other than clarify an ambiguity in a preexisting statute relating to the procedure for adopting amendments to urban renewal plans. Whatever the precise scope of Congress' reserved power under D.C. Code § 5-718(a) it surely encompasses legislation of such an incremental and clarifying tenor. The Court wrote in *Flemming v. Nestor*, 364 U.S. at 610, that "[t]o engraft upon the Social Security system a concept of 'accrued property rights' would deprive it of the flexibility and boldness in adjustment to ever-changing conditions which it demands."

This is equally true of the District's urban renewal plans, as the facts of the Parcel 76 dispute underlying H.R. 10311 demonstrate. Parcel 76 was originally intended to be used for housing; when another propitious use became evident—use as a parochial school—the plan was amended; when the church sponsor withdrew, an amendment was adopted under which Parcel 76 reverted to its original use—housing. If the orderly process of urban renewal plan amendments is not to be hamstrung by persons who ceaselessly seek to veto proposed plan amendments, the clarification contained in H.R. 10311 is an absolute necessity. There is nothing unconstitutional about it.

⁴ Section 2 of the Portal-to-Portal Pay Act of 1947.

⁵ "No department, instrumentality, agency, or official of the Federal Government or of the District of Columbia shall have any power to release or modify or depart from any feature or detail of an approved redevelopment plan . . . unless the modification or departure be approved by Act of Congress."

Mr. FAUNTROY. I want now to yield to our distinguished colleague from Virginia, Congressman Robert Daniel, for questions.

Mr. DANIEL. No questions at this time.

Mr. FAUNTROY. Thank you. Does counsel have questions?

Ms. LUNSFORD. No questions.

Mr. FAUNTROY. Thank you, Mr. Reuss. We certainly appreciate your kindness in taking the time this morning to join us.

Mr. REUSS. Thank you very much, Mr. Chairman.

Mr. FAUNTROY. Let us now move to our next witness, who is Mr. Arthur H. Berndtson of Rothwell, Capello & Berndtson.

Mr. Berndtson, we want to welcome you to our hearings, likewise, and we are grateful for the rather extensive statement and backup material that you have provided us. And you may proceed as you like.

STATEMENT OF ARTHUR H. BERNDTSON, ESQUIRE, COUNSEL FOR SOUTHWEST HOMEOWNERS

Mr. BERNDTSON. Thank you. My name is Arthur H. Berndtson. I am an attorney practicing in the District of Columbia and a homeowner in the Southwest urban renewal area. I am presently attorney of record for the homeowner plaintiffs in the case of *Johannes U. Hoeber, et al. v. D.C. Redevelopment Land Agency, et al.* The case is currently before Judge Harold Greene, U.S. District Court for the District of Columbia. And I am speaking on behalf of those homeowners today in opposition to enactment of H.R. 3336.

Mr. Chairman, I have submitted my statement in the fulsome number of copies requested by the committee, and I presume that the committee staff have read them. So I do not think it is necessary to go through a reading exercise here. I would like to submit my statement for the record. And, if I may, I would like to address some additional points.

Mr. FAUNTROY. Without objection, the gentleman's statement will be inserted in the record at this point, and you may proceed now to make additional statements.

[The prepared statement of Arthur H. Berndtson, esquire, counsel for the Southwest Homeowners—plaintiffs in *Johannes U. Hoeber, et al., v. D.C. Redevelopment Land Agency, et al.*, follows:]

Mr. Chairman, members of the subcommittee, my name is Arthur H. Berndtson. I am an attorney practicing in the District of Columbia and a homeowner in the Southwest Urban Renewal Area. I am presently attorney of record for the homeowner plaintiffs in the case of *Johannes U. Hoeber, et al. v. D.C. Redevelopment Land Agency, et al.* presently before Judge Harold H. Greene, United States District Court for the District of Columbia. I am speaking on behalf of those homeowners today in opposition to enactment of H.R. 3336.

H.R. 3336 deals directly with the legal issue in the *Hoeber* suit which has been consolidated for trial with a later and similar suit entitled *L'Enfant Plaza Properties Inc., et al. v. D.C. Redevelopment Land Agency, et al.* The issue, simply stated, is that the plaintiffs contend that with respect to the modifications of the urban renewal plan concerning Parcel 76 and waterfront sites D1 and D2 that plaintiffs are "affected" purchasers within the meaning of Section 5-711 D.C. Code (Section 12, District of Columbia Redevelopment Act of 1945) and that their written consents to the plan modification are required by the statute.

This is not a new issue. It was first raised in 1968 by the L'Enfant Plaza plaintiffs in a suit against RLA involving other property, when RLA mooted the issue so that it was not decided by the Federal Court. When the present suits were dismissed on a motion for summary judgment raising a Constitutional issue

on private interference with the police power of the District of Columbia, this dismissal was appealed to the United States Circuit Court of Appeals for the District of Columbia Circuit where it was reversed and the case remanded to the trial court. The opinion of the U.S. Court of Appeals of August 10, 1977, is of such significance in this matter that I offer it now for entry in the record of this hearing as Appendix A to this statement. In part, this opinion holds that:

The entire redevelopment process resembles not so much the traditional exercise of the police power to control land use as it does a contractual arrangement binding a set of parties to take actions that are mutually beneficial. Whether or not nearby landowners in the project area are parties to whose benefit an enforceable covenant runs with the land, they could fairly be said to be third-party beneficiaries to a valid contract between the public bodies and any particular landowner. Redevelopers have made substantial investments in reliance upon this contractual arrangement, and the public has received corresponding benefit. The procedures for modifying plans imposed by section 5-711 are clearly part of the agreement. On this analysis, not only the right to consent to plan changes of any landowner "directly" affected, but also that of other landowners "affected" within the meaning of the statute, would survive constitutional attack.

A footnote to this quoted paragraph indicates that a failure of the District of Columbia to follow the "consent" process would presumably constitute a violation of due process of law under the Fifth Amendment. H.R. 3336 now before you would retroactively nullify the vested statutory rights of the property owners now being considered by the U.S. District Court.

Enactment of H.R. 3336 would be a betrayal of private enterprise and would convey the message to all potential developers and purchasers in an urban renewal area that the covenants that run with the land and the stated life of the plan in years are meaningless. Enactment would in effect be a judicial act, resolving a legal issue between the District of Columbia and its taxpaying, land-owning citizens, which is now before a Federal judge.

In addition to the U.S. Court of Appeals opinion, I submit several other documents for the subcommittee's consideration before taking action on H.R. 3336.

APPENDIX B

One document, marked Appendix B to my statement is an excerpt from the *Hoeber* appellant brief to the U.S. Court of Appeals entitled "Background History of Southwest Urban Renewal Area C." There is much false mythology about the evolution of the urban renewal in the Southwest and I present this account to set the subcommittee record straight. This account was not disputed by the District Government or RLA in court so it may be taken as admitted.

APPENDIX C

A second document, Appendix C, is a copy of a statement I made on April 5, 1974, on behalf of the homeowners at the D.C. Council hearing on the parcel 76 change. That statement is as true today as it was then. The Council did not publicly address the economic question then and to this day no public official has addressed this subject in detail on the public record for all to see, including the press. The transcript of the House subcommittee hearing confirms that the proponent witnesses again sidestepped the basic questions on the financial details by answering with unresponsive generalities. One witness did accept my estimate of the present value of parcel 76 as being about \$3 million, based on nearby residential land tax assessed value, with a possible value as high as \$4 million to \$5 million. In fact the economics of the proposal are more disastrous now than they were in 1974. Before you accept the proponents position on this bill I suggest you ask them all about the basic arithmetic in the housing project proposal for parcel 76. Such questions as what was the cost to RLA of acquiring parcel 76? What is the cost to date of servicing the loan for purchasing parcel 76? What is the present value of parcel 76? At what cost were you going to sell the land to the developer? At that low cost to the developer, what were the minimum rents needed to support the financing of the finished project? What projected maintenance funds for the project were contemplated? The answer to these questions will show that the project is financially unsound. It will be an ultimate drag on the precarious economic situation in the residential community in the Southwest urban renewal area, which for several years has included some 9,000 people in

subsidized housing of which 5,000 are low income people in public housing out of a total of about 19,000 population.

SOUTHWEST URBAN RENEWAL

Many people associate the term urban renewal with development of low income housing. Such an automatic association is not the fact. As the courts have consistently held throughout the country, the basic public interest in urban renewal is the elimination of slums and blight with all attendant problems. The redevelopment by private enterprise to follow has been in several forms according to each specific plan. It has included, housing, but not necessarily low income housing and frequently public and commercial development. In the Southwest, the Peets Plan, aimed primarily at rehousing the old inhabitants of Southwest in refurbished housing in the Southwest was found impractical and economically unsound by the NCPC, a Federal Government agency. RLA then retained two renown architect-planners who developed the Justement-Smith Plan which was a far reaching concept of a new town within the city—with new housing, public and commercial reconstruction. But the land sat vacant for some 5 years until Mr. Zeckendorf had his architect-planner, I. M. Pei, make minor changes in the Justement-Smith Plan and the result was the so called Zeckendorf Plan, which was the plan adopted and approved by NCPC and the D.C. Commissioners. That plan included a reduced population in the Southwest of some 1,900 residents including 5,000 low income people. If anything, that socioeconomic mix has proved overly optimistic, as demonstrated by the existing problems of the community including a steady pattern of store closings attributable to poor cash flow and security. Nothing has happened in the Southwest to indicate that an increase in low income population would not adversely disturb the precarious socioeconomic balance currently existing.

There are many alternatives to meeting the need for low income housing in the District of Columbia without jeopardizing the tremendous effort and heavy investment in making the Southwest a viable town within the city.

We take no position regarding the merits of the plan change concerning the waterfront sites D1 and D2 because under the reasonable, common sense, RLA interpretation of Section 5-711 D. C. Code prior to 1968, we do not consider ourselves "affected," by this change. However, we agree with the L'Enfant Plaza plaintiff that the plan change is invalid without the required written consent of affected purchasers and lessees under the statute as interpreted and implemented by RLA prior to 1968.

We homeowners in the Southwest urban renewal area are strong supporters of the urban renewal plan. We have invested our money, time and efforts in the success of the plan. We object to the unnecessary change to the plan regarding Parcel 76 when there are developers anxious to bid for the development of Parcel 76 without a plan change. RLA has in fact discouraged their proposals. We are pursuing a judicial recognition of our rights and equities. If we are wrong and lose our lawsuit, there will be no need for this bill. If we prevail in our lawsuit and Congress were to enact this bill, it would retroactively cut off rights and equities of taxpaying citizens who invested their private funds with faith in the future of the Southwest and the District of Columbia at a time when others were deserting the District for the suburbs.

Accordingly, we ask the subcommittee to take no favorable action on H.R. 3336 which could lead to enactment.

Thank you, Mr. Fauntroy.

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

(No. 76-1715)

L'ENFANT PLAZA PROPERTIES, INC., ET AL. APPELLANTS

v.

DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY, ET AL.

(D.C. Civil 74-959)

No. 76-1721

JOHANNES U. HOEBER, ET AL. APPELLANTS

v.

DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY, EL AL.

(D.C. Civil 74-733)

 Appeals from the United States District Court for the District of Columbia

Argued March 31, 1977

Decided August 10, 1977

Bills of costs must be filed within 14 days after entry of judgment. The court looks with disfavor upon motions to file bills of costs out of time.

Kenneth Wells Parkinson, with whom *John S. Miles*, *Daggett H. Howard* and *Henry Roemer McPhee* were on the brief, for appellants in No. 76-1715.

Arthur H. Berndtson for appellants in No. 76-1721.

Louis P. Robbins, Principal Assistant Corporation Counsel for the District of Columbia, with whom *John R. Risher, Jr.*, Corporation Counsel, *Richard W. Barton*, Assistant Corporation Counsel, and *Michael S. Levy*, Special Assistant Corporation Counsel, were on the brief for appellee District of Columbia Council.

Anne S. Almy, Attorney, Department of Justice, with whom *Peter R. Taft*, Assistant Attorney General, *Earl J. Silbert*, United States Attorney, *Nathan Dodell*, Assistant United States Attorney, and *George R. Hyde*, Attorney, Department of Justice, were on the brief for Federal appellees.

B. Michael Rauh and *Martin Shulman* filed a brief on behalf of Manglen Limited Partnership as amicus curiae urging affirmance.

Before TAMM and MACKINNON, *Circuit Judges*, and OLIVER GASCH,* *United States District Judge* for the United States District Court for the District of Columbia.

Opinion for the court filed by *Circuit Judge MACKINNON*.

MACKINNON, *Circuit Judge*: Appellants in these consolidated cases are the owners and lessees of residential and commercial property in the Southwest Washington, D.C., Urban Renewal Project Area C.¹ The appellees, the District of Columbia Council, District of Columbia Redevelopment Land Agency (RLA), National Capital Planning Commission, and various officials, proposed two changes to the Project Area C redevelopment plan. One of the proposed changes would redesignate an as yet unused property from quasi-public (church and school) use to subsidize low- and moderate-income housing. The other proposed change would permit the expansion of a waterfront motel, the Channel Inn, from 100 to 150 rooms. Appellants brought suit in the district court seeking declaratory and injunctive relief, contending that the appellees are required by D.C. Code § 5-711 (1973) to secure their approval in writing before making any such changes in the project area plan, and that no attempt had been made to obtain their approval. Appellants also argued that the appellees in considering the proposed changes had improperly failed to follow the procedures applicable to "contested cases" under the District of Columbia Administrative Procedure

*Sitting by designation pursuant to 28 U.S.C. § 292(a) (1970).

¹ The project area redevelopment plan at issue in the present case, the Urban Renewal Plan for the Southwest Urban Renewal Area Project C, J. App. 365-452, covers a large area comprising a substantial portion of Southwest Washington, D.C. See J. App. 369-70, 426-27. As of June 1974, shortly after this action was filed, there were 47 redevelopers in the project area who had acquired their interests from the RLA, 180 fee owners of townhouses, and over 400 condominium owners in the project area. NCPC Br. at 18-19.

The duration of the plan is 40 years from its adoption on November 30, 1956, J. App. 375, after which period the redevelopment process presumably will be supplanted by zoning and other land use controls.

Act, D.C. Code § 1-1501(8) (1973). After some preliminary matters, the district court stayed all discovery except requests for admissions, and subsequently granted appellees' motion for summary judgment and dismissed the complaint. This appeal resulted.

The District of Columbia Redevelopment Act of 1945, Pub. L. No. 79-592, 60 Stat. 790, as amended (codified at D.C. Code §§ 5-701 to 5-737 (1973 & Supp. IV 1977)), established the statutory framework for urban renewal in the District of Columbia, and it was within this framework that the redevelopment plan for the Southwest Urban Renewal Area Project C was adopted. An understanding of the Act is essential to the resolution of this case.

In section 2 of the Act, D.C. Code § 5-701, Congress found redevelopment of the "blighted" areas of the District of Columbia in order to provide safe and sanitary "low cost" housing to be necessary in the public interest, and a proper subject for the exercise of the police power. The Act then established an administrative scheme for the necessary planning and implementation to reach this goal. Section 6, D.C. Code § 5-705, directed the National Capital Park and Planning Commission, now the National Capital Planning Commission,² to develop a comprehensive plan for the District of Columbia to serve as a general guide to sound redevelopment. The Planning Commission is also directed to define the boundaries of specific urban renewal projects and to develop project area redevelopment plans for these specific projects. Each project area redevelopment plan must then be adopted both by the Planning Commission and by the District of Columbia Council.³ The area plan is then referred to the Redevelopment Land Agency (RLA), the operating agency created by section 4 of the Act, D.C. Code 5-703. Section 5, D.C. Code § 5-704, authorizes the RLA to acquire real property by purchase, exchange, eminent domain and other means.⁴ It has the power to lease or sell acquired property in the project areas to private redevelopers under section 7, D.C. Code 5-706. This section provides for the protection of the area redevelopment plans:

D.C. Code § 1-1002(b) (1)-(2) (Supp. TV 1977).

... Every such lease and every contract of sale and deed shall provide that the lessee or purchaser shall (1) devote the real property to the uses specified in the approved project area redevelopment plan or approved modifications thereof; (2) begin within a reasonable time any improvements on the real property required by the plan; and (3) comply with such other conditions as the Agency may find necessary to carry out the purposes of sections 5-701 to 5-719 In the instrument, or instruments, of lease or sales, the Agency may include such other terms, conditions, and provisions as in its judgment will [further the goals of the Act], including provisions wherein the obligations to carry out and conform to the project area plan shall run with the land. . . .

D.C. Code § 1-1002(b) (1)-(2) (Supp. TV 1977).

Additional protection for the integrity of the project area redevelopment plans is provided by section 11, D.C. Code § 5-710, which requires that the articles of incorporation or association of any private redevelopment company leasing or purchasing real estate in the project area provide that the company is without power to take action inconsistent with the project area redevelopment plan without a modification properly approved under section 5-711. Similarly, section 20 of the Act, D.C. Code § 5-718, protects approved project area redevelopment plans from violation or alteration by federal and District of Columbia Agencies.

unless such release, modification or departure be adopted by the [National Capital] Planning Commission and approved by the District Council in accordance with the provisions of section 5-711 or unless the modification or departure be approved by Act of Congress.

² See D.C. Code § 1-1009 (1973). The National Capital Planning Commission consists of:

(1) ex officio, the Secretary of the Interior, the Secretary of Defense, the Administrator of the General Services Administration, the Mayor, the Chairman of the Council of the District of Columbia and the chairmen of the committees on the District of Columbia of the Senate and the House of Representatives, or such alternates as each such person shall from time to time designate to serve in his stead, and in addition.

(2) five citizens with experience in city or regional planning, three of whom shall be appointed by the President and two of whom shall be appointed by the Mayor. . . .

D.C. Code § 1-1002(b) (1)-(2) (Supp. IV 1977).

³ The District of Columbia Council was substituted for the District of Columbia Board of Commissioners by Reorg. Plan No. 3 of 1967, § 402(122), D.C. Code Tit. 1 App. (1973).

⁴ This power was held constitutional, even as to property not itself blighted but essential to sound replanning, in *Berman v. Parker*, 348 U.S. 26 (1954).

The procedures for modification of a project area redevelopment plan, which give rise to the issues in the present case, appear in section 12, D.C. Code § 5-711. This section, as amended, provides:

An approved project area redevelopment plan may be modified at any time or times: *Provided*, That any such modification *as it may affect* an area or part thereof which has been sold or leased shall not become effective without the consent in writing of the purchaser or lessee thereof: *Provided further*, That such modification may be effected only through adoption by the [National Capital] Planning Commission and subsequent submission to any approval by the District of Columbia Council, as hereinafter provided. Before approval, the District Council shall hold a public hearing on the proposed modification after ten days' public notice. . . .
D.C. Code § 5-711 (1973) (emphasis added).⁵

II

The appellants' principal contention is that the first proviso to section 5-711 requires the appellees to seek, as a prerequisite to approval of any change in an area redevelopment plan, the written consents of all land purchasers and lessees within the project area whose interests the modification may "affect" in some substantial way. The appellees argue, on the contrary, that the language requires the consents only of the owners or lessees whose property is *directly* affected by a plan change. The district court noted that the statutory language on its face was susceptible of either reading, and that the legislative history was "inconclusive." The court therefore proceeded to constitutional and practical considerations. It adopted the appellees' narrow interpretation of the consent requirement, relying principally upon its conclusion that to construe the provision as urged by the appellants would render it an unconstitutional standardless delegation of legislative power.

This conclusion, the district Court held, was compelled by *Washington ex rel. Seattle Trust Co. v. Roberge*, 278 U.S. 116 (1928), and *Eubank v. City of Richmond*, 226 U.S. 137 (1912). In each of these cases the Supreme Court held consent provisions contained in land use control ordinances to run afoul of the due process and equal protection guarantees of the fifth and fourteenth amendments. In *Eubank*, the Court struck down an ordinance that directed the city's committee on streets to establish a building line, beyond which no structure could protrude, when requested by the owners of two-thirds of the property on one side of a block. In *Roberge*, the Court held invalid an ordinance permitting the erection of a philanthropic home in a residential district only when consent was obtained from the owners of two-thirds of the property within 400 feet. The Court in *Roberge* distinguished an intervening decision, *Thomas Cusack Co. v. City of Chicago*, 242 U.S. 526 (1917), which had upheld against constitutional attack an ordinance banning billboards from residential areas, but permitting owners of a majority of the frontage on a block to waive the restriction. *Cusack* had distinguished *Eubank* on the ground that the ordinance in *Cusack* did not permit property owners to impose a restriction upon their neighbors but rather permitted them to lift a restriction already validly applied by the municipality. *Roberge*, in turn, distinguished *Cusack* on the basis that there had been a showing in *Cusack*, but not in the later case, that the banned land use was in fact harmful to the public welfare. The district court in the present case concluded that *Roberge* severely limited the exception recognized in *Cusack*, and that under this rationale the standardless delegation that would result from appellants' construction of section 5-711 would clearly exceed constitutional bounds.

An initial problem with the district judge's rationale is that it is difficult to see why, on this reasoning, the delegation of the right to consent to the landowner *directly* affected is permissible while a similar delegation to his neighbors who are also affected by the change is not. But we need not resolve the difficult questions of line-drawing posed by the *Eubank*, *Cusack* and *Roberge* decisions. We entertain serious doubt whether this line of cases, dealing with the pure exercise of police power regulation, controls cases like the present one. The urban renewal program created by the Redevelopment Act, of which the area redevelopment plan is an integral part, involves a much greater public role than do simple regulatory programs. The planning process underlying zoning and subdivision control

⁵ This language was incorporated verbatim into Section K of the Urban Renewal Plan for the Southwest Urban Renewal Area Project C, J. App. 424-25.

normally consists only of the preparation of a single general plan, while in the redevelopment planning process both a general plan and a specific area redevelopment plan are prepared. The implementing agency, the RLA, does not simply designate particular land uses as appropriate or inappropriate to a locale, but takes affirmative steps to achieve the plan. The RLA purchases land with improvements through negotiation or eminent domain, clears the land and often realigns streets and utilities, and conveys the land, normally "writing down" its cost, to private or public redevelopers. In order to purchase such land from the RLA, a private purchaser must insert terms into its articles of incorporation or association that will disable it from taking actions inconsistent with the plan. In addition, the deed or lease agreement must contain terms assuring the implementation of the redevelopment plan, and the RLA may insert other conditions it deems desirable. All of these conditions may, at the option of RLA, run with the land.⁶

The entire redevelopment process resembles not so much the traditional exercise of the police power to control land use as it does a contractual arrangement binding a set of parties to take actions that are mutually beneficial. Whether or not nearby landowners in the project area are parties to whose benefit an enforceable covenant runs with the land, they could fairly be said to be third-party beneficiaries to a valid contract between the public bodies and any particular landowner. Redevelopers have made substantial investments in reliance upon this contractual arrangement, and the public has received corresponding benefit. The procedures for modifying plans imposed by section 5-711 are clearly part of the agreement.⁷ On this analysis, not only the right to consent to plan changes of any landowner "directly" affected, but also that of other landowners "affected" within the meaning of the statute, would survive constitutional attack.⁸ We need not finally resolve this issue, however, since we conclude that the district court too quickly reached the constitutional question in determining the proper construction of the statute.

III

Since the district court concluded that the statutory construction urged by the appellants would render the provision unconstitutional and was contrary to the public policy interest in promoting flexibility in urban redevelopment, it saw no need to permit full discovery or conduct a trial. The court accordingly stayed discovery, found no material issues of fact remaining after admissions, and granted appellees' motion for summary judgment. Finding material issues of fact remaining, we hold the grant of summary judgment in error.

Apart from contending that their position was supported by the facial language of section 5-711 and the legislative history, the appellants before the district court argued that their construction of the provision was consistent with the interpretation by the RLA itself from the initial adoption of the project C area redevelopment plan in 1956⁹ until an administrative about-face in 1967 or 1968. During this period, appellants averred, the Agency did in fact seek the consents of landowners in the project area before making changes in the project area plan. A number of changes were made under this procedure, appellants contend,

⁶ Appellants state that all of their deeds and leases contain provisions causing the restrictions to run with the land, *L'Enfant* Br. 14.

⁷ While the RLA, Planning Commission and District of Columbia Council are limited to the procedures of section 5-711, however interpreted, Congress has expressly reserved to itself the right to modify the area plans or permit departures from them. D.C. Code § 5-718 (1973). Congress has already exercised this power. See Dwight D. Eisenhower Memorial Bicentennial Civil Center Act, 40 U.S.C. § 616(b)(2) (Supp. V 1975).

Notwithstanding the provisions of section 12 of the District of Columbia Redevelopment Act of 1945, as amended (D.C. Code, sec. 5-711), the urban renewal plan, approved pursuant to section 6(b)(2) of such Act (D.C. Code, sec. 5-705(b)(2)), for an urban renewal area in which the civic center is located shall be deemed to be modified by the plan approved pursuant to this subsection and the National Capital Planning Commission shall certify such urban renewal plan, as modified, to the District of Columbia Redevelopment Land Agency.

⁸ If the provisions of the District of Columbia Redevelopment Act of 1945 give the purchasers and lessees a contractual right to the modification of the plan only through the procedures of section 5-711, and if the District of Columbia Council attempts to approve a plan modification without adherence to these procedures, the result might be a statutory impairment of contract in violation of U.S. Const., Art. I, § 10, cl. 1. See *United States Trust Co. of New York v. State of New Jersey*, 45 U.S.L.W. 4418 (U.S. April 27, 1977). Even if the District is not a "state" within the meaning of the contract clause, cf. *District of Columbia v. Carter*, 409 U.S. 418, 420 (1973), such an impairment would presumably constitute a due process violation.

⁹ J. App. 365.

showing that it was in fact workable. But more importantly, they urge that this practice, and appellees' practice since about 1968 of inserting waivers of any such right into deeds and lease agreements, was evidence of the interpretation of a statute by the agency primarily concerned with its interpretation. As such, they contend, it is relevant to the proper judicial interpretation of the statute. This is certainly correct as a general proposition. See, e.g., *Udall v. Tallman*, 380 U.S. 1 (1965); *NLRB v. Hearst Publications, Inc.*, 322 U.S. 111 (1944).

Although the question presented was somewhat different, this court recently noted the application of this general principal to the proper construction of the District of Columbia Redevelopment Act of 1945. In *L'Enfant Plaza North, Inc. v. District of Columbia Redevelopment Land Agency*, 141 U.S. App. D.C. 265, 437 F.2d 698 (1970), the appellants had argued that the appellees had changed their interpretation of the term "accessory uses" in the project area plan so that a broader class of retail uses would be permitted in a proposed office building than had been anticipated by nearby redevelopers. The district Court had stayed discovery and granted summary judgment for the appellees, concluding that the agencies' interpretation of terms in the plan was *controlling* unless unreasonable. This court reversed, stating:

Of course it is true that a highly relevant piece of evidence . . . is the interpretation made by a public body, such as the RLA, having official responsibilities for the implementation of the basic document. . . .

[However, t]he error of the District Court's approach in this instance is that it foreclosed the receipt by the court of evidence conceivably related to the interpretation question. As noted above, appellants opposed the grant of summary judgment on the ground that there were disputed issues of fact which were material to the answering of that question. . . . Under our view, . . . relevant fact questions, such as whether RLA's recent interpretation is a departure from prior understanding of the "accessory use" restriction, and, if so, what considerations prompted that turnabout, do exist and should be explored by the District Court on remand. It goes without saying, of course, that evidence of the legislative history of the Act, and of the proceedings of the Planning Commission in preparing the Plan, would also be highly relevant.

141 U.S. App. D.C. at 269-70, 437 F.2d at 702-03 (footnotes omitted).

The same analysis is germane to the questions of interpretation presented in this case. While the early construction of the statutory terms by the appellees would not be binding on a reviewing court, such information should be considered by the court in reaching a proper result. The evidence in the record does not fully reveal the original interpretation of the proviso by the appellees, but suggests that they had interpreted it to require the consents of some class of owners and lessees beyond those "directly" affected by a plan change. The area plan itself reveals that the appellees sought letters of consent for plan changes from redevelopers in the area on a number of occasions between 1956 and 1965.¹⁰ The number of consents suggests that in some cases redevelopers

¹⁰ Twenty-three plan changes were documented in the area redevelopment plan as it appears in the record, with the last change approved on Aug. 20, 1974. J. App. 428-52. Plan changes, with the number of consents obtained in parentheses, were as follows:

- | | |
|--------------------|------------------------------|
| 1. Nov. 16, 1960 | (all purchasers and lessees) |
| 2. Dec. 20, 1960 | (3) |
| 3. Oct. 5, 1961 | (3) (directly affected only) |
| 4. Jan. 3, 1963 | (3) |
| 5. Aug. 7, 1963 | (8) |
| 6. Aug. 7, 1963 | (2) (directly affected only) |
| 7. Jan. 9, 1964 | (no consents) |
| 8. Jan. 9, 1964 | (1) |
| 9. Jan. 9, 1964 | (no consents) |
| 10. May 18, 1964 | (no consents) |
| 11. Sept. 17, 1965 | (9) |
| 12. Sept. 30, 1965 | (7) |
| 13. Dec. 20, 1966 | (no consents) |
| 14. June 27, 1967 | (no consents) |
| 15. Nov. 28, 1967 | (no consents) |
| 16. Sept. 14, 1967 | (no consents) |
| 17. Aug. 6, 1968 | (no consents) |
| 18. Dec. 17, 1969 | (no consents) |
| 19. Dec. 17, 1968 | (no consents) |
| 20. Dec. 17, 1969 | (no consents) |
| 21. Jan. 22, 1974 | (no consents) |
| 22. May 7, 1974 | (no consents) |
| 23. Aug. 20, 1974 | (1) |

other than those "directly" affected were solicited. However, with one exception, it does not appear that all redevelopers in the project area were asked to consent to each plan change. This indicates that the agencies may have developed a workable test for distinguishing between those who were "affected" within the meaning of the statute and those who were not. Appellants also contend that when they agreed to purchase or lease property within the project area, appellees represented to them that their consent would be required before any changes could be made in the plan as it affected them.

It further appears from the area plan, however, that in a number of cases during the 1956-65 period no consents, or only those of landowners "directly affected," were sought. Since 1966 the appellees have consistently failed to seek consents for plan changes, except on one occasion when a single consent was secured. Appellants aver that beginning about 1968, the appellees have inserted clauses into leases and deeds by which redevelopers have waived any right to consent to area plan changes. Appellees, in reply, concede that in several cases consents were sought from redevelopers not directly affected by plan changes, but explain that this was done simply as a matter of public relations.

This state of the record leaves unresolved at least the material issue of fact of the appellees' early interpretation of the second proviso to section 5-711. A collateral question, if the appellees in fact adhered to the interpretation now urged by appellants, is whether appellees had developed a practicable definition of the "effects" that would serve to identify the landowners and lessees with a statutory right to consent to plan changes. Resolution of these questions requires a remand for further discovery and a full hearing on the prior administrative interpretation of the consent provision and its effect upon the proper statutory interpretation.¹¹

¹¹ We agree with the district court that the statute is ambiguous on its face, and could be read to provide either a narrow or a broad right to consent to proposed plan changes. What is clear is that Congress intended to permit *some* purchasers and lessees within project areas to block plan changes by withholding their consents.

We also agree that the legislative history of section 5-711 does not resolve the issue of its interpretation, although reference to the history of the Act as a whole provides somewhat more insight into the meaning of section 5-711 than the district court gleaned from a more limited reading.

The bill that was enacted as the District of Columbia Redevelopment Act of 1945, S. 1246, 79th Cong., 1st Sess. (1945), had been drafted as a compromise between two bills submitted earlier, S. 13 and S. 610, 79th Cong., 1st Sess. (1945). See S. Rept. No. 591, 79th Cong., 1st Sess. 1-2 (1945); H.R. Rept., No. 2465, 79th Cong., 2d Sess. 2 (1946). The Senate Committee hearings on the two predecessor bills, Low-Cost Housing in District of Columbia: Hearings on S. 13 and S. 610 before a Subcomm. of the Senate Comm. on the District of Columbia, 79th Cong., 1st Sess. (1945) (hereinafter Senate Hearings), reprint the two bills and indicate the areas of disagreement between the proponents of each. S. 610 had been drafted by the National Capital Parks and Planning Commission and Alfred Betman, a noted city planning lawyer and draftsman of the Model City Planning and Model Zoning Enabling Acts. See Senate Hearings, supra at 36 (statement of Maj. Gen. U.S. Grant III); 160-61 (statement of Harlean James). The bill emphasized both public housing and private redevelopment for urban renewal land, and paid particular attention to the administrative workability of the redevelopment process. The opposing bill, S. 13, which tracked the organization of S. 610 section-by-section, was proposed by interests who favored deemphasis of public housing and increased focus on private redevelopment after public acquisition and clearance of renewal areas. The debate between partisans of both bills focused on the proper balance to be struck between public and private redevelopers. See Senate Hearings at 164-66 (statement of Charles H. Thompkins). As suggested by the caption of the hearings, it was assumed by all witnesses that the intent of the bills was "slum clearance" and the provision of improved "low cost" housing; commercial redevelopment and other types of housing were not mentioned. While speakers in favor of S. 610 discussed the more flexible planning provisions of that bill in their arguments in favor of its passage, administrative provisions appeared not to be a concern of the supporters of S. 13, whose principal concern appeared to be deemphasis of public housing. See, e.g., Senate Hearings, supra at 160-61 (statement of Harlean James), 164-66 (statement of Charles S. Thompkins), 221 (supplemental statement of Citizens Council for Community Planning). The enacted bill, S. 1246, contained a number of compromises between the predecessor bills' relative emphasis on public versus private redevelopment.

The language of section 12 of S. 1246 also differed somewhat from the corresponding language of S. 13 and S. 610. Section 11 of S. 13 provided:

With respect to any portion or portions of a project area upon which construction in accordance with the redevelopment plan for such area shall not have started, an approved project area redevelopment plan may be modified at any time or times: *Provided*, that any such modification as it may directly affect an area or part thereof which has been sold or leased, shall not become effective without the consent in writing of the purchaser or lessee thereof. In addition to being consented to by the lessee or purchaser as provided herein any proposed modification shall satisfy the requirements provided in subsection 6 for approval of a redevelopment plan.

Senate Hearings, supra at 7; 91 Cong. Rec. 77 (1945) (emphasis added). Section 11 of S. 610 provided:

An approved project area redevelopment plan may be modified at any time or times after the lease or sale of the area or part thereof provided that the modification be con-

(Continued)

(Continued)

sent to by the lessee or purchaser: *Provided further*, That the proposed modification be adopted by the Planning Commission and then submitted to the District Commissioners and approved by it. Before approval, the District Commissioners shall hold a public hearing on the proposed modification, notice of the time and place of which shall be given by mail sent at least ten days prior to the hearing to the then owners of the real properties in the project area and of the real properties immediately adjoining or across the street from the project area....

Id. at 15; 91 Cong. Rec. 1350 (1945).

Only once in the Senate Hearings was the area redevelopment plan amendment procedure of section 11 mentioned. In his second appearance before the Subcommittee, General Grant argued that plan changes should be permitted during construction, as well as earlier:

[C]hanges can be made in the plan under S. 610 with the approval of the District Commissioners and the Planning Commission, and also of the purchaser. The purchaser would necessarily, having agreed to do a certain thing, have to be consulted and his concurrence would have to be obtained to any change in the plan, but he would usually be the one who wants the change in the plan for some very practical reason. He may wish to move the sewer line or change the street a little bit in order to make it a more practical development.

We believe the elastic feature in the plan is advantageous, whereas in Senate 13 the planning stops with the beginning of any construction on the project, and I think it will give rise to some practical difficulties which, I am sure, were not meant to be put in the way of private enterprise doing the job.

Senate Hearings, *supra* at 172 (statement of Maj. Gen. U. S. Grant III).

Appellants concede that under the unequivocal language of S. 13, only the owner of property "directly" affected by a plan change would be required to consent to that change. They similarly concede that the somewhat more ambiguous language of S. 610 also granted this right to landowners directly affected. This concession appears to be appropriate in view of General Grant's testimony.

They argue, however, that a different result is required by the language of section 12 of S. 1246. The language of section 12 is virtually the same as that of section 11 of S. 610, except that the class of persons with a right to object to proposed plan changes is qualified by the phrase "as it may affect." This language, appellants assert, expands the class of persons who must consent to such changes beyond those "directly" affected, to those others subjected to some "substantial" effect. They urge that this expansion was a *quid pro quo* for the rejection of the restrictive provision of S. 13 that would have permitted no plan changes after construction had begun on a project.

Since both S. 13 and S. 610 were in agreement that consent should be required for plan changes once property had been leased or sold, but only the consent of those directly affected, the compromise suggested by the appellants would have been a curious one. As General Grant explained in his testimony, quoted above, rejection of S. 13's limitation of amendments to the period before construction had begun was in the interest of both the planners and the redevelopers. The insertion of the phrase "as it may affect" might simply have been meant to indicate that at the time some sorts of changes were proposed, for example a change in building types or sizes permitted in an area or part of an area, the planners might not be able accurately to predict which developers "may [be directly] affect[ed]."

On the other hand, a broad look at the Act suggests that the Congress did not contemplate the course of urban renewal which actually developed, and that it may have intended to give the appellants the right to object which they now assert. The program envisioned by Congress was one principally aimed at the demolition and replacement of low-cost housing. The Act provided that the RLA could sell or lease a "project area" to a redevelopment company. Section 7(b), and then in a separate later section, almost as if an afterthought, provided that "[i]n lieu of the lease or sale of a project area as an entirety, the Agency shall have the power to lease or sell parts of such an area separately...." Section 7(f) (emphasis added). This arrangement of the statutory language, together with the statements in the committee reports, suggests that the drafters of the bills had in mind a program quite different from that which actually developed. If they thought that sales of whole "areas" to individual developers would be the norm, and sales to multiple developers an exception, they must have envisioned project areas much smaller than that of Project C, which encompasses most of Southwest Washington, D.C. If a single developer controlled all or a large part of a project, any change of the plan for the area "may affect" him. More limited "project areas" would have been redeveloped much more quickly than Project Area C has been, and so problems of plan amendment would seldom have arisen after an initial redevelopment period. In contrast, the plan area in the instant case was very large, *see* note 1 *supra*, the plan period is forty years, and in 1977, over 20 years after the initial adoption of the area plan in 1956, there are still sizable unused parcels of property whose development under a changed plan could adversely "affect" other owners and lessees.

The large project area, together with the subdivision and sale of a number of redeveloped properties, has also greatly increased the number of persons who now assert a statutory right to object to proposed plan amendments. The focus of the Act on "low-cost" housing, however, rather than upon the mixed-income residential and commercial development that has actually materialized, suggests that the drafters may have contemplated large rental projects that would remain in the hands of one or of a few redevelopers. The proliferation of owners by the creation of a large number of fee simple townhouses and condominiums in the project area, for example, was probably never envisioned.

It is possible that the section might be interpreted to require consents only from redevelopers who purchased or leased directly from the RLA, but it is equally likely that it should be construed to cover all "affected" owners and lessees, regardless of the source of their interests.

In summary, the drafters and the Congress may have granted a right to object to plan changes to a class of persons that turned out to be larger than was anticipated, for a much longer period than anticipated. But this would not be a reason to construe the statute to reach a narrower class. It would, rather, be a factor to be considered by Congress in determining whether to amend section 5-711 or to exercise its retained powers under section 5-718. *See* note 7 *supra*.

Appellants also argue that the district court erroneously held that the appellees should not be estopped from modifying their prior representations to appellants concerning their consent requirement of section 5-711. Appellants acknowledge the general rule that governments may not be ordinarily estopped by the past conduct from protecting the public interest, see, e.g., *Udall v. Oelschlaeger*, 129 U.S. App. D.C. 13, 16, 389 F.2d 974, 977 cert. denied, 392 U.S. 909 (1968). They argue, however, that the facts of the present case fall within the exception to that rule providing that a government may be estopped to alter its actions when such alteration would result in egregious injustice, see e.g., *C. F. Lytle Co. v. Clark*, 491 F.2d 834, 838, (10th Cir. 1974) (dictum); *Smith v. District of Columbia Board of Zoning Adjustment*, 342 A.2d 356, 359 (D.C. App. 1975). We seriously question whether the facts of the present case are sufficiently egregious as to fit within this exception to the general rule. However, the district court based its holding on this issue upon its conclusion that to find an estoppel would permit section 5-711 to operate in an unconstitutional fashion. Since in Part III, supra, we hold that the district court too quickly reached this conclusion, we remand.

Finally, appellants contend that in passing upon the area redevelopment plan amendment, appellees were required to follow the "contested case" procedures of the District of Columbia Administrative Procedure Act (DCAPA), D.C. Code § 1-1501 to 1-1510 (Supp. IV 1977). Essentially for the reasons articulated by the district court, we reject this contention.

The procedures applicable to "contested cases" under the DCAPA are set out in D.C. Code § 1-1509, and generally resemble the "adjudication" procedures of the Federal Administrative Procedure Act, 5 U.S.C. § 554 (1970). In particular, the interested parties in a "contested case" are entitled to a trial-type hearing at which only they may participate, as opposed to a less formal "public" hearing of the type utilized in rulemaking. It is undisputed that the procedures followed in the present case would not satisfy the requirements of section 1-1509.

The situations to which the "contested case" procedures apply are set out in D.C. Code § 1-1502(8):

(8) the term "contested case" means a proceeding before the Mayor any agency in which the legal rights, duties, or privileges of specific parties are required by any law (other than this chapter), or by constitutional right, to be determined after a hearing before the Mayor or before any agency. . . .

Despite the general language of section 1-1502(8), the fact that the statute provides a right to a hearing, as does section 5-711 here, is not dispositive of the question whether the proceeding is a "contested case." The question is whether the required hearing is in essence adjudicatory or legislative in nature. Section 5-711 here explicitly requires only a "public" hearing, so if applicants are to prevail they must demonstrate that they have a constitutional due process right to and adjudicatory-type hearing. Appellants have not expressly sought to make such a showing, but have rested their argument upon several decisions of the District of Columbia Court of Appeals. We conclude, however, that the decisions of that court do not accord appellants a right to "contested case" treatment of area redevelopment plan modifications.

The District of Columbia Court of Appeals has generally considered administrative decisions dealing with land use control questions to involve general matters of public policy and therefore not to fall within the "contested case" provisions. This is true even where the issue is related only to a limited land area or even to a specific parcel of land. See *W. C. & A. N. Miller Development Co. v. District of Columbia Zoning Commission*, 340 A.2d 420 (D.C. App. 1975) (en banc); *Chevy Chase Citizens Assn. v. District of Columbia Council*, 327 A.2d 310 (D.C. App. 1974) (en banc); *Citizens Assn. of Georgetown v. Washington*, 291 A.2d 699 (D.C. App. 1972). The exceptions to this general line of authority are narrow. In *Dietrich v. District of Columbia Board of Zoning Adjustment*, 293 A.2d 470 (D.C. App. 1974), the D.C. Court of Appeals held that the question of the administrative grant of a "special exception" for a particular property was a "contested case." Similarly, in *Capitol Hill Restoration Society v. District of Columbia Board of Zoning Adjustment*, 293 A.2d 470 (D.C. App. 1974), that court held that the administrative application of "planned unit development" criteria to a particular property was a "contested case." In each of these cases, the question presented to the administrative body was not a broad question of public policy of the type involved in an urban renewal plan change, but a narrow question of administrative application of specific statutory criteria to the facts relating to a

particular parcel of property. Under both "variance" and "planned unit development" procedures, the particular land uses or configurations are already established and criteria set out in the ordinance for application to specific properties; thus the questions presented are adjudicatory rather than legislative in nature. The present case is therefore controlled not by *Dietrich* and *Capitol Hill*, but by the more general cases.

Reversed and Remanded.

APPENDIX B—BACKGROUND HISTORY OF SOUTHWEST URBAN RENEWAL AREA C¹

In the Redevelopment Act of 1945, enacted August 2, 1946, Congress created the District of Columbia Redevelopment Land Agency (RLA) to undertake "the planning and rebuilding of slum, blighted, and other areas" of Washington, D.C. The old Southwest had at that time deteriorated to an almost unbelievable slum in the very foreground of the Nation's Capitol.

The then National Capital Park and Planning Commission (now NCPC) identified the Southwest as one of the first areas to be redeveloped in the 1950 general land use plan for the city. An NCPC planner named Elbert Peets, developed a detailed neighborhood plan for the Southwest. Generally, this plan provided that the area should remain peopled with low-income families and that redevelopment efforts were to be limited as much as possible to rehabilitation of existing structures within the same street pattern. The plan, known as the "Peets Plan," was soon discarded as being uneconomic and impossible to implement under the existing Federal programs.

The "Peets Plan" was superseded in 1952 by the "Justement-Smith Plan," a plan which has been described as monumental in scope, produced for RLA by the architects Louis Justement and Cloethiel Woodard Smith after prolonged study. This plan assumed that redevelopment was more than mere slum clearance and that more lasting goals were within reach. It was the genesis of the concept which was ultimately executed in the Southwest, but it has one serious flaw—no private redeveloper would step forward and offer to implement the plan.

Indeed, RLA was in trouble; in view of the Southwest's reputation as a crime-ridden slum, private developers were reluctant to risk capital on such a project. Washington area builders were especially wary. The Southwest's big break came in 1954 when William Zeckendorf, of the New York firm of Webb and Knapp, seeing the potential of the Southwest as a model community in sight of the Capitol, presented RLA with what became known as the "Zeckendorf Plan." This plan, principally derived from the Justement-Smith Plan, added several features which improved the economic viability of the area and had the decided advantage of being the product of a developer willing to put it in effect.

RLA and Webb and Knapp executed an agreement of understanding on March 15, 1954. This agreement recognized Webb and Knapp as the dominant developer in the Southwest. The remaining issues were resolved by April, 1956 and the Southwest Urban Renewal Plan for Project Area C was adopted by NCPC and approved by the then D.C. Commissioners on November 30, 1956. Thus, it was late 1956 before any redevelopment actually commenced.

In the meantime, in compliance with the Urban Renewal Act of 1949, which funded the Southwest Project Area C, RLA had proceeded to tackle the relocation problem. Project Area C had a total of some 4,000 families and about 17,500 persons in 1952 when the first project was announced. Between 1952 and 1956 while the programs were being formulated and prior to the acquisition and assembly of land by RLA, the population of Area C changed substantially. The more able, independent and well-to-do families moved out without any public assistance and as the renewal plans developed this process accelerated. The result was a large increase in the total percentage of socially and economically de-

¹ Sources: Southwest Guide 1965-1966, a joint publication of The Southwest Community Council, Inc., and The Southwest Neighborhood Assembly, Washington, D.C.; RLA Annual Report 1970: "Where Are They Now"—a study by Prof. Daniel Thrusz, D.S.W., University of Maryland, Health and Welfare Council of the National Capitol Area, an RLA handout.

pendent families in the area. RLA was confronted with a large relocation task under the Urban Renewal Act which required that all dislocated persons be housed in "decent, safe and sanitary dwellings. Through 1960, RLA accomplished their relocation with great credit under the guidance of James G. Banks. The local and national press commended those responsible for this performance. It is noteworthy that about 12 percent of the dislocated families were moved to public housing in the Southwest contiguous to the redevelopment area, and that there were an additional 929 new public housing units built in the Southwest on land extracted from the urban renewal area.

A set-back in the redevelopment was encountered in 1964 when the Webb and Knapp real estate empire collapsed and their large holdings in the Southwest were sold. This event is significant because the redevelopment task was then split up into a multi-developer pattern and as the new redevelopers took over heavy obligations, in turn new equities were created. Plaintiff-Appellants in the two cases before the Court are among those redevelopers.

All told, by December 31, 1970, RLA's Annual Report 1970 stated that the total investment in the Southwest was in excess of \$503 million of which private enterprise invested nearly \$318 million and the Federal and D.C. Governments over \$185 million. The Federal investment was primarily in the departmental buildings along and north of the railroad right of way. Thus, private enterprise has a major stake in the future of the Southwest.

Private enterprise and private investment has been a vital element in the implementation of the redevelopment of Project Area C. Indeed, the payments of substantial monies and assumption of large financial obligation by the private redevelopers and ultimate purchasers in the Project Area were the transfusions that brought new life to barren land assembled and cleared by RLA in accordance with the public policy of the United States declared by Congress in the District of Columbia Redevelopment Act of 1945.

It is the contention of the Plaintiff-Appellants that Congress recognized the essential part to be played by these redevelopers and purchasers by enacting and then amending the statutory procedure for implementing changes in the urban renewal plan so as to protect the interests of those who put their money and efforts into the plan. That procedure is codified in Section 5-711 of the D.C. Code which Plaintiffs asked the District Court to interpret.

APPENDIX C—PARCEL 76, SOUTHWEST URBAN RENEWAL AREA C

POSITION PAPER OF S.W. PROPERTY OWNERS

Recommended action of District of Columbia Council

That the proposed plan change of use of Parcel 76 be disapproved and returned to NCPC with instructions to explore the proposal of the Salvation Army Headquarters, National Capital Area to develop the site within the present use prescribed in the Plan, there maintaining faith with all Southwest redevelopers and purchasers.

Discussion

The unspoken purpose in seeking D.C. Council approval of the proposed usage of Parcel 76 is to quickly use "fair share set-aside" funds to erect a section 236, below-market-cost, low and medium income housing project on this last available block in the redeveloped Southwest.

Despite its critics, the Southwest Redevelopment Project represents the city's greatest urban renewal success to date. By RLA's own figures the total redevelopment value of the project area exceeds \$503 million of which \$317 million is invested private funds and \$185 million are D.C. and Federal Funds. (RLA Ann. Rpt. 1970) the D.C. property tax return on the private investment has increased over 6 fold. Now NCPC and RLA propose to erect a highly visible project which will depreciate that success and will break the faith with all who have invested in the Southwest.

It is a cold, hard fact that the strict constraints of the HUD section 236 specifications, when applied in today's high cost building market, result in a bare, functional project with minimal esthetic appeal to either the occupants or those who must look at the project. Despite the best architect in the nation, if he were available, a 236 project on Parcel 76 would be a bare bones erection far below

the architectural standard of the surrounding new buildings and homes in the redeveloped Southwest. Additionally, Parcel 76 is in the full view of thousands of people daily from the Southwest Freeway (Int. 95N), the large office buildings across the Freeway, L'Enfant Plaza, the new Southwest water-front and from the adjacent \$80,000 privately owned townhouses and condominium apartments. Indeed, it is difficult to conceive of a more unsuitable block in the District of Columbia for a 236 Project and there is the prospect that such a project would become a derisive monument to irrational bureaucratic decision making under Home Rule were it to be erected shortly after Home Rule becomes effective.

Despite RLA's and NCPC's action to discourage the proposition, the National Capital Area Command of the Salvation Army desires to develop Parcel 76 within the present usage of the renewal plan for its new expanded headquarters. An overwhelming majority of the property owners in the Southwest would welcome such a development and, as indicated, no change in the Renewal Plan is required. To approve such a project would keep the faith with all developers and purchasers and would provide a positive influence and asset for the city and the Southwest Renewal Area (rather than a detracting, below neighborhood standard, erection).

The D.C. Council should be under no delusion that the Southwest Redevelopment Project Area is enjoying economic success and stability. Such is not the case. Indeed, the economic situation is marginal and extremely vulnerable. While it is true residential property values (and taxes) have risen, they have not kept up with similar properties in the suburbs, primarily because of the burden imposed by the extensive public housing now in the community. The merchants in L'Enfant Plaza are precariously successful while many of those in Waterside Mall are in dire straits. (See attached clipping). The waterfront businessmen are barely coping with heavy financial commitments. Subsidized below-market housing invariably acts as an economic depressant in any highly developed area and the Southwest cannot take any additional depressing influences without seriously threatening an existing sensitive balance. One speaks of calculated risk, but what substantial gain is there in this case which justifies the known risks involved? We know of no certain gain because with 236 housing in this improper location all will ultimately lose—including in time the very people the 236 subsidy is designed to help, as the economics of the community decline.

The currently available "fair share set-aside" 236 funds are limited and are the last available for at least several years to come. The District of Columbia should use these funds to gain the most benefit for the most people in areas of the City where they will upgrade the community situation. A 236 project will not be a upgrading asset in the Southwest Redevelopment Area.

Lastly, the D.C. Council should bear in mind that a substantial number of Southwest Area property owners are on record with the Council that should a plan change for a below-market-cost housing project be approved by the Council, suit will be promptly filed to enforce their statutory right under Section 5-711, D.C. Code (1973 Ed.) (written consent of affected purchasers required for change of the renewal plan). These people are all among the strongest supporters of the Urban Renewal Plan and have invested in the plan and the future of the City. They do not wish to bring this suit against the Council in the Federal Court and have so advised the Council. Nevertheless, all preparations for such a suit have been made and it would be unfortunate to have a confrontation on this issue which can seriously and adversely affect future redevelopment projects in the City, whether the suit is won or lost. Indeed, if the suit is lost by the redevelopers and purchasers, it is difficult to conceive of major money sources readily supporting future redevelopment in the District of Columbia. This confrontation and suit should be avoided.

SHOPKEEPERS, AREA RESIDENTS COMPLAIN: AID SOUGHT FOR WATERSIDE MALL

(By Barbara Bright-Sagnier and Claudia Levy)

Long before every suburb of Washington was dotted with huge shopping centers, plans were being drawn for a major commercial mall in the city's Southwest residential urban renewal area.

But the Southwest's Waterside Mall on M at 4th Street, S.W., the only shopping center serving that area's 18,000 residents, is only three-fourths finished, its 26

existing and about-to-open shops a far cry from the 100 stores envisioned by the developer.

The developer, Bresler & Reiner, Inc., says urban renewal restrictions on the project, including a prohibition against department stores which it is now trying to have rescinded, hampered development, in turn discouraging new stores from locating there.

Neighborhood residents say the small number of stores and the dust and disruption of the on-going construction discourages them from shopping at Waterside Mall. In contrast to suburban malls, where free parking is taken for granted, people who drive to Waterside must pay to park their cars in an underground garage, where grocery shoppers have to lug bags from the mall's—and the Southwest's—only supermarket.

Shopkeepers in some cases complain that they are dying on the vine for lack of customers; along the mall's second floor, merchants have clocked less than four customers an hour on the entire floor. Shoppers say they are afraid of gangs of teenagers that in the past have accosted people in the mall's corridors.

Residents of Southwest feel a "deep sense of disappointment" about its shopping facilities, says Granville Woodson, a D.C. schools administrator who is a 14-year resident of the Harbor Square complex in Southwest.

"We've been promised a shopping center from the beginning," he said. "It was one of the necessities that was part of the original plan. All the developers got people to move in on the basis that it was going to be a first-class area, but there would be a shopping center. We haven't had it and, in many people's opinion, it has degenerated."

And to breed success, it is generally agreed by merchants, shoppers, developers and planners, Waterside Mall has to have the shops to attract customers from beyond the Southwest.

Earlier, in the 1950s, commercial plans for the residential Southwest south of the planned Southwest Expressway had been more modest: two new strips of stores, to replace scattered small shops driven out by urban renewal, would serve the projected population of 15,000 to 20,000. While many of the original stores had been marginal, their business drawn from Southwest's 23,000 mostly lower and moderate-income residents, the new stores would serve a planned mix of incomes, ranging from public housing tenants to residents of luxury high rises.

To the north of the expressway, additional stores would be included in the L'Enfant Plaza commercial development to serve a new complex of government and private offices.

By the early 1960s, plans were being drawn to expand the small shopping center into a more ambitious mall in the residential area around M Street, S.W. While the earlier shopping center was a one-story suburban-type center surrounded by acres of parking, planners and developers were now interested in a three-story mall, flanked by apartment-office towers.

As Waterside Mall became more complex, so did its problems, says developer Charles Bresler.

Financing was hard to find following the 1968 riots because, as he describes it, lenders were fearful of investing in the inner city.

Design specifications of the city's urban renewal unit, the Redevelopment Land Agency, for features such as underground loading docks and second-floor shops caused other problems, he said.

Subway construction, unexpectedly high vandalism and other disruptions also are cited by the developer.

Bresler has asked RLA for revisions in the urban plan to legitimize some provisions he already has violated, such as construction of two office towers, now housing the Environmental Protection Agency, without including apartments called for under the plan.

He also has requested a change that would allow a department store at the mall, a provision originally included in the plan by officials who did not want Waterside to compete with the downtown. No department store will seriously consider locating any type of facility there unless the provision is changed, he said. And experience in recent years has proved that department stores are necessary to draw customers to other mall shops, he adds.

Several merchants and restaurateurs in the mall claim that the developers misrepresented the mall's potential to them when the businessmen were negotiating their leases.

"We were given a brochure in 1971," said Gonzalo Chavez, partner with Hanson Johnson and Jack Snyder in the Goncho Restaurant. "Very pretty...it showed 100,000 people within walking distance of the mall for lunch-hour business their restaurant done "one-half of 1 percent of the 100,000 promised on the survey," said Chavez, "we would be selling 400 lunches a day." The average business, however, runs at 100 lunches, he said.

The Goncho partners said they believe their payment is too high for the location—\$3,500 for rent, "then they tacked on \$2,500 per month for the use of utilities, then an additional \$400 per month for parking," said Johnson.

Charles Bucher, owner of the Ferbo Emporiums gifts shop on the second floor of the mall, said he has not yet decided whether to move his shop downstairs to the first floor, or to close entirely.

"Three of the seven occupants upstairs already have moved out—the health foods store, the sewing and fabric shop and the Oriental Boutique," said Bucher.

A Waterside Mall shopper—one of the handful in evidence on a sunny afternoon last week—said the boutique owner had set up a table at the stairs in an attempt to lure customers upstairs, "but apparently even that didn't work."

Norman Blumenfeld, chairman of the Southwest Neighborhood Assembly, calls the Safeway store "tremendously inadequate." The store area is 18,000 square feet, but Blumenfeld said stores of 45,000 square feet in similarly populated areas are easily supported.

The neighborhood assembly, said Blumenfeld, has attempted to get RLA to bend its rules so that more space in the mall will be rented. "RLA has narrowly construed urban renewal to mean only government, commercial or residential tenants," said Blumenfeld. Quasi-government or private organizations such as a drug treatment program have been disallowed.

Several members of the community have sought to stimulate a solution to the problem of Watergate Mall.

Marion Buelken, who sells townhouses in Capitol Park, one of several middle-to upper-income housing complexes that surround the mall, has gathered about a thousand area residents' signatures on petitions asking Safeway's corporate offices to expand the store in the mall, which local officials say they are now planning to do.

Much of the neighborhood contention over the mall centers around the Safeway, where managers say they are hard-pressed to serve the divergent needs of public housing residents and their more affluent neighbors.

Safeway officials, who acknowledge that the store has been operating off and on in the red, say vandalism and pilferage got so bad that notice was issued last fall that young people without adults accompanying them could enter only if they carried shopping lists and adequate money. It is a measure that has been used only in one other Safeway store here, a facility at 8th and C streets NE that the company recently closed because of heavy losses.

Several congressmen who live in Southwest have taken a continuing interest in the area's problems, including Rep. Henry S. Reuss (D-Wisc.), a member of the House District Committee who held an informal hearing on the commercial problems in November. Reuss suggested that city and federal planners form a task force to work out the myriad problems of Waterside Mall. Officials agreed to this, but no action has been taken.

Mr. BERNDTSON. Mr. Chairman, you indicated that the hearings on the bill last year, H.R. 10311, would be incorporated in the record. I would request also that the record of the report of the Senate Hearing on H.R. 10311 also be included in the record.

Mr. FAUNTROY. I am informed by counsel that we do not generally include records of the reports of the other body in the House. And I am sure that the other body will have the opportunity to consider similar material when this matter becomes pending there.

Mr. BERNDTSON. Thank you, Mr. Chairman. The reason I brought that up was that in the Senate report, that was the first time I had an opportunity to address some of the things that were included in this committee's report of last year, which were factually erroneous.

Mr. FAUNTROY. Let me say that I will include that by reference and if you care to outline to us those things which you found to be in the

committee's report last year that were erroneous, we would be very pleased to receive it at this moment.

Mr. BERNDTSON. Well, Mr. Chairman, I do not think it will be necessary to go into all the details if you will incorporate it by reference and if the committee staff will take cognizance of it. That is all that I would want to do, is to bring it to their attention.

Mr. FAUNTROY. Could you summarize it, though? Could you just give us a couple sentences on it?

Mr. BERNDTSON. Well, for one thing, many of the statements made by Mr. Reuss, at that time and this morning, are just not in accordance with the facts. And I pointed out—

Mr. FAUNTROY. As a case in point?

HOMEOWNERS' ACTION

Mr. BERNDTSON. Well, first of all, he says that this matter of parcel 76 was opposed by the L'Enfant Plaze and the Rockefellers. The record will show that the case was brought by the homeowners. I represent the homeowners, and I filed the case, and we were the ones that went to court. And as it was L'Enfant Plaza did not come into the case until about 3 or 4 weeks later. And it has been the homeowners in Southwest who have protested this matter all the way through the administrative hearings; and finally, when we brought the matter to the attention of the District of Columbia Council, we advised them, at that time, that we reluctantly, if our rights were not going to be observed, that we would have to file a suit. And we did. So, all this imagery of the poor people versus L'Enfant Plaza and the Rockefellers is just that; it is just imagery.

Now, we have a very serious problem in the Southwest. There is no question about it. And we, as homeowners and property owners who have put a lot of money and investment and time and effort into the Southwest, are very much concerned about it. And we are very much concerned about the socioeconomic mix in the Southwest.

We all moved in there knowing that there were 5,000 people in public housing in the Southwest when we bought, and we bought bare land. We went in there knowing that we were going to be a part of a development of a new part of the city, and according to a plan. And we looked at that plan hard. And we, every one of us, had to make an estimate as to whether this plan was viable and whether we could go forward and whether we could rebuild this part of the city and make it a viable part of the city.

We are still doing that, and we have still got some very serious problems down there, problems that the public officials have not been all that great addressing. But yet, when something like this comes along, it is politically expedient to climb on the bandwagon on this project. And that is the way that it has gone all the way through. I have raised many economic questions about this project as it was going through. They have never been addressed by the public authorities on the record.

RLA INTERPRETATION OF LAW

Now, as far as the basic law, Mr. Reuss says the basic law is not all that ambiguous. I agree with him 100 percent. And so did the directors

of RLA, the first executive director of RLA, the people who had their start in the Southwest with bare land, no plan, no plan at that time. They had to interpret the law. They had to put a plan together, and they had to get started. And that is the way they interpreted the law, was that it was not only the owner of the land that may be affected, but the change could affect other owners in the area. And they looked at the law. They looked at the legislative history. Mr. Searles has testified to all this under oath. And there was no question in their minds, at that time, either in the minds of the executive director or the staff. And when the first developers were brought into the Southwest, that was the understanding that they were given. And that was the consistent position of RLA and the developers, who clearly understood. There was no discussion about it, no question about ambiguity. All through the administration of Mr. Searles, followed by the administration of Mr. Doyle, the second executive director of RLA.

For 12 years, there was no question in anybody's mind what that section of the law meant. And all the developers went in down there with that understanding. As a matter of fact, they would not have gone in if that was not the understanding. And they have so testified under oath.

Now, we homeowners came along and we looked at that plan, and the same thing was of concern to us as to the original developers that came in back in the early 1950's. Our houses were built in 1966 to 1968. And as we came in, we, too, were concerned with what is the integrity of this plan, is this another plan that is going to get kicked around every time there is a change of administration downtown or something? Are we going to get kicked around on this thing, or does this plan mean what it says, that this is a contract, a compact, between the public authorities and private enterprise for a period of 40 years? Now, that is the way the courts have interpreted what an urban renewal plan is. It is in the nature of a contract. It is not an exercise of the police power; it is not zoning. And it runs for a definite period. And there is a definite relationship set up.

And now what is being proposed is that we change directions 180 degrees on that commitment by the public authorities. And I think what is in question here is the integrity of the District of Columbia. And I think it is a very serious matter that this late interpretation be handed down when, as I say, there was not the slightest question in anybody's mind for 12 years until RLA reversed the field.

Now, they did that in 1968 in a case that had nothing to do with parcel 76. There was a case that involved L'Enfant Plaza at that time. And L'Enfant Plaza raised the issue and saw that there was going to be a different interpretation; and they took the matter to court and it went all the way to the court of appeals. In 1968, that is when the issue was raised, not now, in 1968. Just before the court was about to come down with a decision on this issue, RLA—or rather, NCPC—withdrawed the change that was involved and mooted the question so that the court did not rule on it.

So, this question has been kicking around now, after RLA reversed the field in 1968, and this is not a new issue coming up with parcel 76 or with the D1-D2 issue.

SOUTHWEST HOUSING RESIDENTS

Now also, Mr. Reuss talked about we have only people in public housing and people in luxury apartments. I am sure the staff of this committee will be interested to know that the staff members of Congress all live in luxury apartments, because a great many of the people who live down there in the apartments in the Southwest are staff people here on the Hill. They are not luxury apartments. The fact of the matter is they are middle-income apartments. And most of the housing in Southwest is middle-income housing.

Incidentally, I would also add under current legislation, we also have some low-income people living in those same apartments under rent subsidy programs. So that those luxury apartments are not all filled with rich people. There are some poor people in those apartments, also.

ST. DOMINIC'S CHURCH

Mr. Reuss indicated that the Dominican Church returned the property and theirs were the only consents required. They had nothing to do with consents. The title to the property was always in RLA. And what RLA is trying to get away with is an interpretation that on this land that the only consent that is required is of RLA. Well, that is great from the public body's point of view. They are free to do whatever they want with it because they do not have to get anybody's consent. The fact of the matter is that that land originally was the same property allocation as our townhouses were built on. And if nothing had happened, there would have been additional townhouses similar to ours on that property right now.

But what did happen is that back about 1965, around there, RLA wanted to exchange that land for a piece of land that was allocated for a parochial school north of the freeway. And they went to St. Dominic's and said, "We want to assemble a big block of land to build a big office building over here, and we would like to exchange that land which is allocated to you for a piece of land on the other side of the freeway." And so, the consents of all developers involved were obtained at that time, in addition to the owners of the land itself.

So then, parcel 76 was allocated for a parochial school. Now, it is my understanding that it is not that the school was unnecessary or unwanted down there. We all considered it an asset when we saw that school down there. We thought that was an asset to the community. Unfortunately, St. Dominic's ran into the same problem that many of the Catholic schools are running into all over the country. They could not afford to build and operate a school there. And it was with great regret that they were not able to build that school.

So they told RLA: "You have allocated the land to us; we release any interest we have on that land." They never did own the land. So as far as consents were concerned, that title was in RLA at all times. So what RLA was interpreting the law to mean was that, in effect, no consents at all were required. They could do what they wanted with that land.

SOUTHWEST URBAN RENEWAL

Well, this is a very dangerous thing if this is the way the future of the Southwest is going to be determined. The Southwest was the

first major urban renewal plan undertaken with Federal help in this country. It was a major undertaking. It is larger than all the other urban renewal plans in the area. And, at that time, the concept initially was that they would rebuild the houses that were there to house the people that were there. And that was a plan that was evolved by a Mr. Peets, who was a planner from National Capital Planning Commission. And the Peets plan was very seriously considered, and it was found to be uneconomic and just not viable. And so, it was put aside. And then, they called the best architectural planners that they could find in the area, and they came up with what was known as the Justement-Smith plan. Mrs. Leonard Smith and Mr. Justement produced a plan that was addressed as monumental. It went beyond mere housing. It was in the concept of a new town within the city. It included housing; it included commercial developments; included hotels and public buildings. It was a whole new town.

That plan was approved, but no developers came forward. And the land sat there and the land sat there for 5 years with no developers. Nobody wanted to go into the Southwest. Nobody wanted to put any money into the Southwest. Finally, Mr. Zeckendorf from New York came along, and he got interested in it. And he had his architect, a then relatively unknown architect by the name of I. M. Pei. And he had Mr. Pei look at the Smith-Justement plan and make some minor adjustments, and that's the plan he submitted to NCPC. And NCPC adopted that plan and sent it on to the District Commissioners and that was the plan that was adopted. And that is the plan on which the RLA built the Southwest. And that is the plan we all have a great interest in, we have all invested in, and we are trying to produce.

So, this is a very serious matter. When, at this late stage of the game after RLA had no difficulty interpreting that law, there was no question in anybody's mind for 12 years, at this late stage of the game, we are going to have a switch of rule here. And we are going to start playing a new game and this is going to release the anchors that hold everybody to what was recognized as a great plan for the Southwest, which is now going into the second half of its life, and will go on till 1996.

That is the background on this matter. And it is not any question about the great corporation and the Rockefellers versus the poor people and all that sort of thing. It is a very serious matter that involves us all down there.

Mr. FAUNTROY. Thank you so much, Mr. Berndtson. Let me just ask you a couple of questions.

As you know, the code in question is title 5 on building restrictions and regulations and, specifically, title 5, sec. 711, Modification of Re-development Plans. Now, is it my understanding that you and those whom you represent are purchasers or lessees of the land in question?

Mr. BERNDTSON. That is correct, Mr. Chairman.

Mr. FAUNTROY. The land affected by the change, parcel 76?

Mr. BERNDTSON. That is correct.

Mr. FAUNTROY. Do you own the land or do you lease it?

Mr. BERNDTSON. No; we own it in fee. Each one of us owns our house in fee.

Mr. FAUNTROY. You own parcel 76?

Mr. BERNDTSON. No; no. I own my house and the land under it in fee.

Mr. FAUNTROY. Do you own parcel 76?

Mr. BERNDTSON. Parcel 76 is owned by RLA. RLA owns parcel 76.

Mr. FAUNTROY. I am not a lawyer. You interpret the law as written to mean that you have the right of consent, even though you are not the owner or lessee of the property in question?

Mr. BERNDTSON. That is correct, if my land or the use of my land is affected by the change on parcel 76.

Mr. FAUNTROY. And I take it, therefore, any owner of property who holds a lease in the entire project area, in your view, his consent would be required before any change could be made?

Mr. BERNDTSON. No; that is not our position. That has never been our position.

Mr. FAUNTROY. Explain it to me.

Mr. BERNDTSON. Well, you said all such owners in the area, that is not position. Only those who are, in fact, affected by the change on parcel 76.

Mr. FAUNTROY. Explain to us how you are affected, then.

Mr. BERNDTSON. Well, let me go back to the testimony that has been given under oath in court as to how RLA went about this thing in the first place.

Mr. FAUNTROY. No; I want to know how you are affected.

EFFECT OF MODIFICATION OF PLAN

Mr. BERNDTSON. All right, well this is what I am getting to. I do not think that I and all the rest of us are entitled to make that judgment. We have a right to expect that RLA is going to make that judgment, as they did for 12 years. Whenever they had a change—they had within their staff, they had a group that got together. And they looked at this thing and they said: "Now, who is this going to affect?"

In height it may cut off the view of this building over here or it may cut off the air circulation or it may change the traffic pattern in front of this property on that street. It may have an economic impact on a developer who has purchased with a specific purpose of putting up whatever he has put up, a hotel or a store or whatever; after doing a market survey and looking at the plan, he put his money on there. And now they are talking about putting something else in over here that would have affected his market survey if he had known about it at the time that he made his investment. So, that is going to affect him in an economic sense.

The density, the changes of density of people, on a given piece of land and in that area. That was considered an effect. So they looked at all of these things and then decided who around, which land around was going to be affected. Now RLA did that for 12 years. And our position is that we are entitled to have RLA continue to do that.

Mr. FAUNTROY. How did they consult with you?

Mr. BERNDTSON. They did not consult with me at all. As a matter of fact, this is an administrative determination that is made by many administrative agencies.

Mr. FAUNTROY. There were no hearings?

Mr. BERNDTSON. No; there was no necessity for a hearing. They make a determination according to their interpretation of the law, as they interpreted it for 12 years.

CONSENTS REQUIRED FOR CHANGE

Mr. FAUNTROY. And they extracted from you written consent?

Mr. BERNDTSON. And then they wrote a letter to, and we have examples in the record, they wrote a letter to the property owner involved and said we have a change in this piece of property, and we have determined that your consent is required in accordance with citing the law, and then they obtained what the change was and they obtained the consents.

Mr. FAUNTROY. In writing?

Mr. BERNDTSON. In writing. And this was considered a requirement before the change went to NCPC for adoption and to the District of Columbia Commissioners or Council for approval. And in one instance, it went to the District of Columbia Council for approval and it was returned to RLA because the consents were not attached. And it was considered an incomplete document because the written consents were not attached when it came for final approval.

Now, my point is this: For 12 years this procedure was recognized not only by the RLA, but by NCPC and the District of Columbia Commissioners.

Mr. FAUNTROY. When you purchased the property which you now feel is affected and without consent for which you feel the change is not lawful, what was the plan for the use of the parcel?

Mr. BERNDTSON. Parcel 76 was set to be semipublic—church school—it was semipublic set aside for St. Dominic's Church school.

Mr. FAUNTROY. So that you did not purchase your land during the period when it was planned for housing?

Mr. BERNDTSON. No; I did not. That was very early on. But, at that time, the owner of the land, the developer of the land that I later purchased, his consent was obtained at that time.

Mr. FAUNTROY. His consent was obtained for the change?

Mr. BERNDTSON. For the change.

Mr. FAUNTROY. From housing to school?

Mr. BERNDTSON. That is correct.

ALTERNATIVES TO MEET HOUSING NEEDS

Mr. FAUNTROY. You mention on page 6 of your testimony that there are many alternatives to meeting the need for low-income housing in the District of Columbia without jeopardizing the tremendous effort and heavy investment in making Southwest a viable town within the city. For the record, I would like to get some of your suggested alternatives.

Mr. BERNDTSON. Yes. First of all, let me point out, I think I have it in my statement, that well over half a billion dollars have been committed in the Southwest on the strength of this commitment. Most of that private money, not Government money, private money. That is right out of RLA's annual report.

Now, as for the alternatives, since the urban renewal plan evolved in the Southwest under that original statute, there have been several enactments by Congress, good enactments by Congress, for housing. The enactments that set up the neighborhood development plan, and the most latest one is the community development plan. There has been a whole different system of planning and funding for these pro-

grams. And the District of Columbia is moving forward and it has neighborhood development plans and community development plans. And these are handled on 1-year increments. And I think it is a very good way to plan.

But my point is this, that the Southwest urban renewal area was evolved on an entirely different statute, under an entirely different kind of plan. And it was one of the few in the District of Columbia, which is a completely comprehensive plan where every square foot in that area is allocated to a use and committed to a use. And the other plans are more flexible. They are appropriated on a year-to-year basis, and they do not make that commitment to the developers who come into the area.

Now as long as a commitment is not made to the developers or to the people who come into the area in the first place, I say the public authorities have full opportunity to change from year to year, do whatever they want. But when the land sat there in the Southwest for 5 years, when nobody would make a move into the area, and very strong commitments were made.

Mr. FAUNTROY. What were the commitments made? To keep low- and moderate-income people out of the area?

Mr. BERNDTSON. No; as a matter of fact, there are 5,000 people in the first units that were built in the Southwest, with 963 public housing units.

Mr. FAUNTROY. All right. But we are talking about moderate-income people, also.

Mr. BERNDTSON. All right. And there were moderate-income units built at that time.

Mr. FAUNTROY. What commitments were made to you that are being violated, you feel, by the building of low- and moderate-income housing on parcel 76?

Mr. BERNDTSON. That is not the commitment. I am talking about the commitment in that section of the law we are talking about. Either we do—those property owners who are affected do have the right of written consent or they do not. That is the issue in the lawsuit.

Mr. FAUNTROY. And it is not whether or not you want low- and moderate-income housing across the street?

Mr. BERNDTSON. That is not the issue.

Mr. FAUNTROY. The issue is not that you purchased this property thinking that the plan called for a parochial school?

Mr. BERNDTSON. That plan called for a parochial school and if the plan change was made to that property at a later date that affected my property, then I had the right of written consent to whatever that change is.

Mr. FAUNTROY. Do all the persons whom you represent contend, as you do, that when you purchased the land and entered the contract which was obviously available to you as to future residents of the area, that you did not know that at that time the plan had been changed from residential to parochial?

Mr. BERNDTSON. Oh no, we all knew it was parochial. As a matter of fact, Mr. Chairman, we considered that an asset; we considered the parochial school an asset to the community. We all saw it on the plan.

Mr. FAUNTROY. But how would you be adversely affected by the change?

SOUTHWEST DEVELOPMENT PLANS

Mr. BERNDTSON. By the change that is proposed now. The change that was run through without our consent involves 125 to 200 low- to moderate-income housing units.

Mr. FAUNTROY. Not public housing, is that it?

Mr. BERNDTSON. Oh no, no.

Mr. FAUNTROY. Not public, that's right.

Mr. BERNDTSON. No, not public; low- to moderate-income, and it includes a 90-foot elevator apartment and a parking garage underneath for 400 cars. Now, that is the change that was put through the NCPD and the District of Columbia Council, and is, in their view, the current use for parcel 76.

Let me point out a few differences here. One of the things that the planners were concerned about in the Southwest was the parking and vehicle traffic density. To give you an example, the upper section of Town Square, which includes 94 townhouses and runs from 4th Street to 7th Street—94 townhouses the plan provided for and we have 107 parking spaces in an area almost three blocks long. On this one plot, parcel 76, that is going to be across the street from that, which is less than half the size, it includes a parking garage for 400 cars. And we say that is definitely going to affect the traffic pattern in our residential community.

Second, it includes a far higher density of people than we have in the townhouse section. You can not build in our townhouse section; the provision of how much land can be covered, etc., is very restricted. This is going to be a much higher density. And furthermore, in the Southwest—to give you further indication of our problem—we, at one time, had two supermarkets in the Southwest; the Safeway in Town Center and Acme; the Acme could not hack it. It went out of business. There was a small Safeway, Townhouse Safeway I think they call it, in another area where there is moderate-income housing right now. It has gone broke and has been closed. There was another small Safeway up in L'Enfant Plaza. It has closed. The stores in Town Center have been gradually closing. There were two levels of stores at one time; the upper level has been closed off. The lower level right now has two vacant stores in the choice corner; they are standing there vacant.

We have a very serious cash flow problem in the Southwest. And that Town Center is a very serious problem to everybody. So now, going back to parcel 76, you talk about this high density; you talk about the 400 automobiles, et cetera. If you draw a line from parcel 76 to Town Center the only supermarket and the only residential shopping center in the Southwest, you have to go right through the whole of Town Square which is our townhouses. You can go over this way and down on one street or you can go over this and down and over on the other street. But you must go through our townhouse area.

We have serious problems with trespassing now. My next door neighbor went out and found his car jacked up and his wheels taken off. These kinds of things happen. We have had young people come through, knock down the boards of the fence of the patio on common green and steal two bicycles right out of the patio, all on private property. Now, the police have asked us to please lock our wrought iron

gates to our common green area. This is something we do not want to do. We do not want to have a garrison situation down there. These are the problems we live with. And we are not complaining. This is the way it is. But now, we are very much concerned about putting a high density housing development right across the street from us and then, having this additional pedestrian and vehicle traffic through the area.

Mr. FAUNTROY. Mr. Berndtson, let me make sure I understand what problems you have indicated that the elected officials and the appointed officials have not considered in the judgment which they have made and some of the economic financial soundness questions that you have urged us to take into account.

OBJECTIONS FOR SW DEVELOPMENT PLANS

I understand now, therefore, that you feel yourselves affected by (1) increased congestion in parking, and (2) that you are concerned about declining shopping, you are concerned about shopping that is declined primarily because there have not been enough, apparently, people patronizing the businesses, being inundated by the 400 people who might come because they would probably have to go by your properties in route to the shopping center, which is by your own admission suffering for the lack of patronage. And then (3), you have some concern that the people who would live in the low- to moderate-income housing would take your bikes and otherwise harass you on the way to the shopping center. Is that the sum of your objection to this change?

Mr. BERNDTSON. Well, there is a 90-foot apartment involved that completely changes—

Mr. FAUNTROY. Change the view. Would it cut off the sun from your properties?

Mr. BERNDTSON. Cut off the sun, light, and view of our properties and the properties that are directly across the street are the ones who would be directly affected by that. And let me add one other thing on the commercial side. Our last tax bills came around based on 100-percent assessment. And the assessment of our little pieces of land, 20½ feet by 72 feet, is over \$34,000. This comes out to some over \$23 a square foot. Now, RLA is carrying that land of 133,000 square feet, which is parcel 76. They are carrying it on the books at \$300,000, which was the accumulation price way back in the fifties. And their intention is to write this down, to make this thing feasible; they are going to write this down—they are permitted to by law—to \$100,000. That means that if this thing is put together, that we are going to be confronted with land that has been evaluated by the public authorities at less than—somewhere around 80 cents a square foot across the street from us, while the same public authorities have been telling us that we are doing a great job in rebuilding the Southwest and it is becoming more valuable down there all the time. And our land is now worth \$23 a square foot. I think that is going to have a very serious effect down there.

DEVELOPMENT WRITE-DOWNS

Mr. FAUNTROY. Just before I yield to the gentleman from Virginia, did you receive a write-down?

Mr. BERNDTSON. No.

Mr. FAUNTROY. You purchased it from the Federal Government, did you not?

Mr. BERNDTSON. No; I purchased it from a developer and I purchased—

Mr. FAUNTROY. After he had received a write-down?

Mr. BERNDTSON. I do not know what went on in his contract. I am not familiar with it.

Mr. FAUNTROY. You are familiar with the urban renewal process that was in effect in Southwest by which the Government acquired the properties at a fair market value, and then wrote it down to the developers. You are familiar with that.

Mr. BERNDTSON. I am not familiar with the details of the contract of the developer who built my property.

Mr. FAUNTROY. You are familiar with the process by which we renew communities in this Nation, or we did at that time, under urban renewal.

Mr. BERNDTSON. Yes; I am.

Mr. FAUNTROY. And you do know that you were the beneficiary of an urban renewal process by which land was acquired at fair market value and then written down to the developer.

Mr. BERNDTSON. I was the beneficiary of nothing.

Mr. FAUNTROY. Oh, I see.

Mr. BERNDTSON. I purchased my house at market value with no Government support, no FHA, no VA, market value and commercial loan.

Mr. FAUNTROY. Thank you.

Mr. BERNDTSON. And let me say, there was no great rush to buy those houses down there. The houses were built in 1966 to 1968. In 1968 when the riots hit, the sale of those houses down there had dropped off and the last of those houses was not sold until 1971. So, there was no great rush and this was no great bargain at that time. I thought it was a good buy. I thought it was a good buy at market.

Mr. FAUNTROY. And all those whom you represent acted in the same fashion, is that it?

Mr. BERNDTSON. I believe so. Right.

Mr. FAUNTROY. And you do not feel that your problem at Town Center would be enhanced at all by the addition of more residents in the area?

Mr. BERNDTSON. Not more low-income residents.

Mr. FAUNTROY. What about moderate-income residents?

Mr. BERNDTSON. Possibly. But not in the concentration that we are talking there. We are talking about several problems, all intertwined. And this high concentration of people on this one plot, from our experience of living there, we know it is going to have an adverse effect on us.

And under the rules of RLA, most important, under the rules, we did not set the rules of what is the definition of who is affected, RLA set those up and followed them for 12 years. And our position is we are entitled to the determination under the rules set up by RLA as to whether we are affected or not, and whether our consents are required. That is our position.

Mr. FAUNTROY. Thank you. Mr. Daniel?

SW AREA DEVELOPMENT PLANS

Mr. DANIEL. Thank you, Mr. Chairman. Mr. Berndtson, I think it is useful to have you follow my colleague, Mr. Reuss, because we certainly have been exposed to contrasting viewpoints and analyses of the same situation. I am not one of you lawyers either. So, I am going to hesitate when I talk about law here. But I think that you and the chairman were not as much on target as you might have been in the colloquy that just transpired here in talking about the prospective bicycle thefts and trespassers and the shadow of a high apartment building and traffic density and this sort of thing. To me, it seems more sensible to the question here that there is a law that has been on the books for 30 years and a procedure under that law that has been operating with the administration for 12 years, as you have pointed out. I would observe that the modification, and I think we could only call that a modification as proposed, changes the very essence of the law. That to go from being affected, as I think any reasonable person would think you are going to be affected, I do in the ways you have described, to have that be the operative word to narrow it to the person who is the purchaser of lessee is really an abrogation of the original intent of the law.

Now as a lawyer, do you see it that way? I would presume you do.

Mr. BERNDTSON. Yes; that is the essence of the case that we took to the U.S. district court.

Mr. DANIEL. Right. Again, I am not familiar with these legal things as you are, but it seems to me that that is the strength of your argument more than talking about the things that you feel might happen if the development would take place. You mention that there are developers who are anxious to bid for the development of parcel 76 have had a plan change. I suppose it is possible to find out who these developers are to the extent that they have made themselves known.

Mr. BERNDTSON. One that we know of is that the Salvation Army is interested in parcel 76. They have a tentative plan of moving their national headquarters down from New York and combining in one facility their national headquarters plus their regional three-State District of Columbia headquarters, and also, then set up a chapel and day care center. And they were interested in developing parcel 76 within the current use which is semipublic. And there were others; Georgetown Day School is interested in that site. And I believe, if RLA had done what we believe they should have when St. Dominic released the land, if RLA had put out a prospectus on that land in the use and what not, and solicit it then to see who was interested in developing it, go ahead and carry out the plan without any change, they would have received, I believe, many viable proposals for that land. And there was no need to make a change in the plan at all.

Mr. DANIEL. I think you make a useful point in the end here where you say that with regard to your lawsuit that if you are wrong and you lose, there would be no need for the bill. And if you prevail and we were to enact this bill, it would retroactively cut off rights and equities of taxpaying citizens who invested their private funds with faith in the future. I also think you might have put there with faith in a contractual arrangement and faith in the law. Is that not correct?

Mr. BERNDTSON. That is correct.

Mr. DANIEL. As we are supposed to around here, I am going to reserve my judgment on this question until the time comes to vote. I think you made a pretty good case. Thank you.

Mr. FAUNTROY. I yield to the distinguished young lady from New Jersey.

Ms. FENWICK. Thank you, Mr. Chairman. I was conditioned in another world, the central ward of Newark. And it was clear at that time that in the time of the terrible riots in which 26 lives were lost, that when the Governor—Governor Hughes, our distinguished Governor who became Chief Justice of our Supreme Court—set up a commission to study the causes of the riots. One of the causes, the principal cause, was that the people in the area and to which the medical and dental school had been built with the best intentions in the world, were affected by this school, were not concerned, never consented to it and the resentment that was built up by arbitrary action of moving into an area that affected their lives, caused them to riot with such intensity and fury.

I think, in other words, we are going to have to pay some attention. The business of government is justice. I felt very badly and I think all of us in New Jersey did, that this was foisted upon the people of the central ward of Newark without their consent. I do believe that when people are affected, they must be considered and, therefore, my first impression of this bill is that it should never pass. I would like, however, on account of my interest in housing and I was a witness in two different rent strikes that the tenants of our low-income housing brought against the housing authority in Newark; so I am very familiar.

BUILDING PLANS FOR PARCEL 76

I would like to ask some questions about, particularly, this high-rise building. How many stories are planned in that 90-foot building?

Mr. BERNDTSON. It is prescribed as a 90-foot building, which I presume would be eight or nine stories.

Ms. FENWICK. Eight or nine stories. Do you know what population is planned for that building?

Mr. BERNDTSON. Well, it could be as high as 200 units.

Ms. FENWICK. What are the sizes of the units? This is very important. If that is low-income housing, it should never be built for families. It is all right for older folks.

Mr. BERNDTSON. If it is an elevator apartment, it could call for 480 bedrooms. Now, how many people that is, I do not know what the magic figure is.

Ms. FENWICK. Well, it would depend on the number of people that they plan for each unit. It is not done that way?

Mr. BERNDTSON. No, it is not done that way.

Ms. FENWICK. And, of course, the size of the bedrooms would depend, although the double-decker bed does make a difference. Is this for families or is this for old folks or is this for singles because what we have found, Mr. Chairman, and this is very important, in Newark, there is absolutely no question about it, the Kerner-Lindsay report, which was, as you remember, 1968, came down and I think with great clarity, and rightness, that we can no longer put low-income families in high-

rise buildings. And that if we do it, we are doing something antisocial, and it is a wicked thing to do. We have made prisons in Newark, and they are called Federal prisons by the people whom I represented in these rent strikes. We should not do this and if this is a low-income family, it ought to be condemned on that basis alone.

We have great success in Newark with high-rise for old folks. That is an entirely different kettle of fish. But density, of course, makes a difference and we know that now. We have fine low-income housing in Newark, two-story and I would give you their names. I know them all; I have been in them all, just as I have in the high-rise. Before we start doing these things that affect the lives of people, we have got to begin to think about the people.

And I would like to ask you, what is the area of parcel 76?

Mr. BERNDTSON. It is roughly 133,000 square feet, just a shade over 3 acres.

Ms. FENWICK. 133,000 square feet, 3 acres plus, right?

Mr. BERNDTSON. Yes.

Ms. FENWICK. Well, we know what the density is supposed to be. There ought not to be more in low-income housing than four people to an acre. Ten people to an acre is maximum.

Mr. FAUNTROY. Well, if the gentlelady will yield, tomorrow morning we will have the Director of the Department of Housing and Community Development, who will be knowledgeable on the specific questions that you asked, which I would answer generally that there will be housing for the elderly included in these units as well as some family housing, the mix of which—

EFFECT OF MIXED HOUSING

Ms. FENWICK. You can not put a mix, Mr. Chairman.

Mr. FAUNTROY [continuing]. The mix of which will be described by the Director.

Ms. FENWICK. You can not put a mix of old and young low-income families in the same building. We found out in Newark too, and we have a long history—it goes back, our public housing just after the Second World War. It was started by one of the insurance companies very successfully, copied by the Federal Government with disastrous results. And we must be more conscientious about what we do when we involve people's lives. But the principle on which it is built is one that I think is wrong. I do not think that you can say that the only person affected is the person who owns that particular 133,000 square feet, or whatever or 3 acres; how many acres is the whole product? Yes, 3 acres.

It affects everybody, all around. And I think that it is begging the question; it is not quite intellectually honest to say that they are not affected. They are. And if you try to put them in the central ward in Newark, another hospital, however well meant, without consulting the people and getting some impression, at least from them, whether you have hearings or written consent or whatever, we would be asking for more riots. I think it is not the way to proceed. You cannot move into an area and just say you are only affecting the only few square feet on which you intend to build.

Thank you, Mr. Chairman.

Mr. FAUNTROY. Thank you. And at this time, may I call Mr. Charles Bresler, the Town Center management, to testify at this moment?

Mr. BRESLER. Thank you, Mr. Chairman.

If the Congresswoman is going to leave, I would just like to address one or two remarks to her, if I may. Are you leaving, Ms. Fenwick?

Ms. FENWICK. I must soon, but I certainly would want to hear what you have to say.

Mr. BRESLER. Although I was going to address a few remarks to you and to your statements, but if you will be here for a few minutes, I will go on with my testimony, and I will stop when you are ready to leave.

Ms. FENWICK. Whatever our chairman decides.

STATEMENT OF CHARLES BRESLER, TOWN CENTER MANAGEMENT

Mr. BRESLER. Thank you.

My name is Charles Bresler. Mr. Chairman, we have gone back a long way together. I am chairman of the board of Bresler & Reiner, Inc. and the managing partner of a number of real estate partnerships that have accomplished the development of a majority of the housing in the Southwest urban renewal area C. That property that we have developed is currently assessed in excess of \$70 million.

I am no newcomer to the Southwest, having been active in the area since 1952. My wife, Fleur, was the director of the NYE Settlement House which was located on the site of the new freeway, the Southwest Expressway. I courted her in the Southwest during the period when the agency was removing the housing down there that was 76-percent blighted, 40-some percent without inside toilets, 80-percent non-resident owned. Most of it was rented and was what we call slum housing that was owned by absentee landlords. So I know the initial planning; I know the problems of Southwest.

I have been active in real estate in the District of Columbia for over 35 years and hold a masters degree in urban affairs and in business administration.

Mr. Chairman, your letter requested testimony on four specific questions or issues. So prior to testifying on the bill, I will try to briefly respond to each of the questions.

MODIFICATION OF URBAN RENEWAL PLANS

Your first question was the right of local jurisdiction to modify an approved urban renewal plan seeking only the approval of the purchaser or the lessee of the area or part to be modified.

I presume for the purposes of H.R. 3336 this question means a change in the plan that changes an individual parcel as to use and not broadly to change the entire area in the plan. Local jurisdictions should have any rights that their enabling legislations gives them. However, in the instant case of Southwest area C each developer entered into a contractual relationship which, then was with a semi-, quasi-independent body which guaranteed the developer, the agency, future purchasers or lessors of land, the mortgage bankers, the financiers, the investors, and even the purchasers of certain rights and re-

sponsibilities by both parties. An integral part of these guarantees was the reliability of the development plan, the specifications to the plan, an agreed upon change mechanism which was established to provide for equal treatment to all people affected by the plan and development within the area.

Urban renewal was and is funded in the main by Federal funds. In addition to strictures placed on the local bodies and developers by the legislation and regulations, in order to provide for uniformity the urban renewal handbook and part II of the typical urban renewal contract, which is in effect in all urban renewal areas around the country has uniformly been interpreted to mean the change in an urban renewal plan could only become effective after the consents of the affected parties were sought and received.

HOUSING

Ms. Fenwick, I see you are ready to leave. I would just like to make two or three comments. I was in Jersey in your particular community at the time of the riots. It was extremely frightening in those areas to see 17-year-old National Guardsmen shooting rifles at cigarette butts in windows. The impact you talked about is something that the Congress and HUD have tried to attack, where we will not have more igloos or more public housing units; where you go up 10 stories high and take the problems of 50 square blocks and put them in 1 building and put a lid on them; that when children play in an elevator and another child has to go to the bathroom, there is no place he can go; where you can not put your milk bottles outside; have your papers delivered.

We are aware of that. It has been a misguided aim of the public purpose and public funds to recreate these. I agree with you 1,000 percent, and I think if this committee and the Congress are really interested, there are better ways to solve the problem. And I do not call it moderate- and low-income housing. There is no such thing. Housing is housing, as this desk is a desk. If a poor person uses it or a rich person uses it, it makes no difference.

We, as developers, build housing for all people. Now, if you want housing for low- and moderate-income people to live in, then, there must be some mechanism to allow those people to live in the housing.

SOUTHWEST DEVELOPMENT

In Southwest when we developed, the average rental for an apartment was \$90; that was back in the 1960's. That same apartment is not today renting for \$500 or \$300 for an efficiency; it rents for \$200 to \$250. I would pose to you as my testimony so brings out that the agreed upon rents that the Federal Government is subsidizing for an efficiency apartment are well over \$400, and for a two-bedroom over \$600 in this area.

Now, the moderate- or low-income person does not pay, and the standard is not 20 percent of the rent, but 35 percent. The houses for \$650 on Capitol Hill are also plus utilities; and I guarantee for those who pay electric and oil or other fuel bills, those houses run up close to \$800 and \$900, including insurance and water and all the rest.

So, I wanted to just follow up what you said. And thank you very much for your attention. I realize you have other things to do.

Mr. FAUNTROY. Thank you.

Mr. BRESLER. An affected party in the Southwest from the inception of the plan and the start of development until the early 1970's meaning anyone who could directly be affected by the change. In short, in response to the first question posed by the committee, I support the right of a local jurisdiction to modify, alter or change any plan, law, or zone so long as the enabling legislation provided clearly such right along with the proper administrative procedures for accomplishing such a change.

But I cannot support, as in the instant case, changes in a manner that abrogate the rights of all those who entered into a sole contractual obligation which through the lean and developmental years was interpreted and administered to give equal protection to all parties and now, that the area has been substantially developed, successfully and in accordance with the plan and its specifications, is sought to be reinterpreted or reenacted for the benefit of a select few at the cost of the rights of the many.

AMENDMENT PROPOSED

I respectfully submit that if this committee and eventually the Congress is to report on this bill favorably, that the bill be amended to exempt from the provisions of this act any redevelopment areas that has been 75 percent completed.

This would give the District of Columbia the flexibility it claims is needed in new or undeveloped renewal areas. It would also put prospective purchasers, developers, users, finance agencies or financing institutions on notice, that they would take title to the property, finance or develop parcels within a plan area and prior to 75 percent of the area being developed, would be subjected to the possibility of a renewal plan change, without their consent.

CLARIFICATION BY CONGRESS OF INTENT

Question No. 2 that you posed was the wisdom of Congress in enacting legislation to clarify the original intent of the Redevelopment Act.

As a former legislator, having served in the Maryland House of Delegates or House of Representatives and the State senate, and in the possibility that time, personal considerations and the electorate will make it possible for me to again serve, I jealously guard, support, and defend legislative prerogative.

Since the prime beneficiary of this legislation in the Southwest area C is the subject of a long, costly, tortured, and protracted court case, I feel that in the interests of equity, fairness, and the separation of powers, legislative versus judicial, that there should be no instant legislation that would affect the Southwest Plan or this case. While there is no preclusion, nor there should be, for Congress to enact legislation that is narrow in nature, affecting only one or two parcels, or righting a previous wrong, or upsetting a prior court decision, or changing the manner or method in which a law, statute, or regulation is enforced or interpreted, I submit that such power should be used sparingly and reserved for cases where the public good or the redress

of wrongs is of paramount importance. I do not feel that in the case of the Southwest Area C Renewal Plan that this is the case.

BENEFITS OF LOW- AND MODERATE-INCOME HOUSING

Question No. 3 was the social and economic benefits which would result from low- and moderate-income housing on parcel 76.

In order to respond to this, I must be presumptuous and change the designation low- and moderate-income housing. As I stated to Ms. Fenwick before, as a developer and the builder of thousands of units, may I proffer to the committee that there is no such thing as low- and moderate-income housing. There is housing—housing that meets local and national codes which should be available for all segments of the population.

In other words, the question should refer to housing, housing for low- and moderate-income persons. May I first state that the majority of the Southwest was developed with housing that was priced for sale or leased to persons who currently meet the criteria set up for low- and moderate-income; and that the majority of the over 1,200 units we manage, perhaps due to rent control and other legislative actions, are below the allowed market rents for the current section 8 programs.

The current allowed rentals under this program, I understand, are in excess of \$400 for a one-bedroom unit and close to \$600 for a two-bedroom apartment. I further understand that the current limits for a four-person household under section 8 is in excess of \$18,000 per year. Interestingly enough, the aforesaid rentals are exempted from rent controls and are allowed to rise regularly as the CPI goes up.

Those on the committee who are interested or familiar with housing and particularly Federal programs are aware that housing constructed under or with the assistance of Federal grants, guarantees, or insurance programs, at best, have only mixed results.

Under current market criteria, over 40 percent of the households in this country qualify for some type of housing assistance payments. The actual per unit direct cost to HUD, the taxpayer and the public has been and will remain substantially higher for subsidized, public or section 8 housing than for comparable private sector housing. The indirect costs and operating costs for this type of housing, including financing, tax expenditures and costs to local and Federal Government, are higher than those of private housing. The entire approval procedure for financing of new federally subsidized units is so complex that it may take 1 year to 1½ years or more to complete before construction even begins. This invariably results in large costs overruns, due to inflation and lost time, which hampers and burdens the program.

According to Mayor Barry, the District of Columbia now contains over 50 percent of the Government-assisted or subsidized housing units in the metropolitan area, which is far in excess of the local fair share program agreed upon by HUD and the Metropolitan Council of Governments.

If the definition of economic benefit rests on the most efficient use or allocation of resources and, in this case, is limited to the amount of funds available to the District of Columbia, which is reportedly

only \$4 million, than the costs/benefits of these programs in the use of highly sought after resources, land, money, construction material, and labor is highly questionable.

The question for this committee, the Congress generally, local and national government is—can the public purpose and interest, that of providing decent and affordable housing for all segments of the population, be better served by a reexamination of housing systems, policies, and their implementation.

I submit that with the limited resources and tax dollars available in the light of Proposition 13 and trim proposals sweeping the Nation and the complex fiscal problems facing the District of Columbia, the limited resources could be better utilized through the private sector. Without taking up the committee time in complex proposals, I submit that subsidy in the form of housing allowance certificates could be given to those who qualify.

These certificates would allow those low- and moderate-income families to rent existing housing now constructed in the Southwest at a rental which is far below the now approved Federal rental levels for subsidy projects. A program of this nature would also avoid the impaction and other attendant problems caused by the creation of 100 percent federally assisted complexes. There is no question that substantial social benefits arise when proper housing is made available for the bulk of the population.

Past history and the housing acts of 1948 through 1978 have demonstrated the material benefits, social and otherwise, resulting from the creation of new housing. However, a study of the morass and current conditions of housing as well as the social implication of same prevalent in the so-called public housing complexes now in the Southwest and in the District elsewhere leave many questions as to the social benefits attendant to public housing complexes. A walk through any of these buildings or developments, if you dare, will cause you or anybody else deep concern for the lives and futures of the inhabitants and their offspring. There must be a better way than what has been done up to date.

NEED FOR LOW- AND MODERATE-INCOME HOUSING

Your last question was the need for low- and moderate-income housing in the District of Columbia.

This is a question that, based on the available information, can not be answered.

Would you believe that at the present time, there is no citywide housing strategy to allow the city to effectively respond to its housing situation and meet the housing needs of its residents. There is no dependable information available to evaluate housing problems and housing-related trends. There are no housing goals or alternatives.

I submit that if this committee is concerned, which I am sure that it must be, for housing for low- and moderate-income persons or families, it would be better to examine a program to develop a housing information system; a coordination of city and private housing efforts, especially in preserving, restoring and refurbishing sound neighborhoods for a cross section of income, social and ethnic populations; the development of neighborhood strategies with realistic citizen, govern-

mental and business involvement; and legal and organizational changes to make the city more effective in dealing housing and housing-related issues; and lastly and most important, a method to cope with Federal programs, funds and the revenue sharing, which is just impossible.

Unfortunately, the city government and the citizens of the District of Columbia are not used to thinking in terms of strategies because a strategy implies a long-range plan. We have been used to dealing mainly in fragmented policies created by fragmented government structures and considering mainly short-run concerns.

Since housing takes a long time to create and lasts even longer, it can not be treated in the short run. Most of the decisions, plans, and actions affecting housing in the District of Columbia are based on imperfect or inadequate information. There is no system whereby the city or this committee can accurately assess the need, supply, resources, or demographics. Housing in the city is undergoing constant change. The existing stock is aging, deteriorating, being abused, becoming obsolete, as well as being maintained, repaired, and renovated, and even remodeled.

At any given time, some of the housing units stand vacant. For example, Mayor Barry recently identified over 800 homes owned by the District of Columbia that have been vacant over long periods of time. Very wisely he mandated that the boards be removed from these homes and an immediate program be implemented to restore these houses to the housing stock. The Mayor should be commended, and this committee should take legislative notice of the Mayor's action.

People everyday are dying, being born, moving, and adopting different styles of life. They are growing up, getting married, divorced, change their income levels, move, retire, and die. Some stay single, others marry, and others have children. Late studies show that the present trend is for few children or none at all. Some of the population is unemployed, underemployed, and their situation changes rapidly. This change in our population and the housing stock is occurring hourly, daily, and monthly. Yet, no one agency in the District of Columbia has a current, up-to-date inventory of housing, the city's needs for housing or the development of a strategy to accomplish those needs.

Mayor Barry has indicated that a priority item is the assemblage of this vital data and the development of a strategy to fill the housing need, whatever it may be. For example, when the first apartments were built in Southwest the majority of the units were efficiency or studio-type units. As income levels increased and consumers were willing to spend more on larger housing facilities, these efficiency units became less desirable and a glut on the market. In fact, a check with most of the owners in the Southwest today will show that these units are the most difficult to rent and have the greatest turnover. A one time, we offered these units to the local housing authority for use as housing for the elderly. And I believe, Mr. Chairman, that was before your committee at a prior hearing.

At present, no one can accurately assess the need for housing for low- and moderate-income persons or generally the type, location and requirements for additional housing stock in the District of Columbia and the best method of applying our limited resources available to meet this need.

Without a long-range assessment of need and resources, without some indication of what government, both local and Federal, will commit over the next years, and without some assurances of economic stability, I can not honestly respond to this question.

I might note that, I believe, the District Committee is now looking at the budget for 1981 for the District of Columbia, which probably will not be adopted until when—July of 1980. So, it is almost impossible for the city government to make plans as to the future resources and development of those resources.

(Mr. Diggs assumes the chair.)

BACKGROUND OF SOUTHWEST URBAN RENEWAL PLAN

Mr. BRESLER. If I may, I will now briefly discuss the history of the Southwest Urban Renewal plan and its relationships to parcel 76.

Unlike anything else in development, urban renewal is a highly complex, extremely costly, tedious and difficult task. Its planning and execution involves many problems such as land use, density, street and traffic patterns, community facilities, social planning and public participation.

The Urban Renewal plan was the forerunner of what today is known as PUD or Planned Unit Development or comprehensive planning. This is far different from the regular zoning as we know it. Each parcel in the plan was carefully analyzed as to its use, height, density, coverage and special requirements; and it was related to all other uses within the area. Street and traffic patterns, community facilities and social needs were carefully examined and overlaid into the plan to provide a balance and insure the stated objectives of the plan.

Unlike a zoning change, an urban renewal plan change was, and still is, a complicated and lengthy process. The sanctity of the plan is demonstrated by the specifications accompanying the plan and made a part of each contract that every developer and the local agencies were made to sign. And it is recited in every deed conveying property, and I quote in part: "The guide and enabling documents for agreements and covenants between the agency and any urban renewal company, individual, or partnership," and note these words, "and any agency of the Federal or District governments whose participation is required to carry out any portion of the said plan." That is far wider language than appears anywhere else.

An examination of the plan and its objectives, Ms. Counsel, will show that a majority of the 16 stated objectives of the plan have been met.

Our predecessor company was the original selected developer for parcel 76. We had planned on developing this parcel as a continuation of the Town Square Townhouses and flats that Mr. Berndtson referred to. I have here a picture of the original rendering which shows parcel 76 developed in townhouses and flats similar to the parcels east from 7th to 4th Streets and south from the expressway to Eye Street. This plan was produced in a scale model which was about 8 feet by 10 feet and was kept in the RLA offices.

PLAN CHANGES

In order to provide for the DHUD Building and the Department of Transportation Building, prior to the development of the major portion of area C, prior to this development, a plan change was submitted and approved. And we had to consent to that plan change, as did others around us, that required us to relinquish a portion of our site, the Waterside Apartments site between 6th and 7th Streets, Maine Avenue, and Eye Street, to the Fifth Baptist Church. We also gave up the development rights to parcel 76 to St. Dominic's Church for the construction of a parochial school. A copy of the original plan is also submitted for the committee's information.

[The plan and consents referred to appear in the hearing record of the pending legal proceedings.]

Directly across the street from parcel 76 is the Town Square Condominium and Town Square Townhouses and Apartments. These three projects now have an approximate valuation of over \$30 million and were responsible for \$500,000 in real estate taxes, almost double the entire real estate taxes paid for the entire project area C in 1958 prior to the commencement of redevelopment. The total private investment in Southwest to date is estimated to be over a half billion dollars, which provides the District of Columbia government with nearly \$10 million in real estate tax revenues.

Each of the 700 residents of the adjacent areas were party or privy to the plan. They expected a school or, in the alternative, townhouses and walkup flats, no more than three stories in height with the same developmental restrictions required for the parcel on which their home is situated or their residence is.

I submit, Mr. Chairman, that if parcel 76 cannot or will not be developed as the plan now allows, semipublic or school, that it should be reverted to its originally planned development. This is row housing or flats with the same developmental restrictions as the adjacent residential parcels. I further suggest that the use of this parcel as a commercial parking lot for the past 15 years is a blatant disregard of the plan and the citizens who live in the area. I would suggest that anyone from the committee go down to the site between 7 and 9 any morning or 4 to 6 any afternoon and look at the site.

As a major developer and investor in the area, we have consistently, over the years, offered to develop parcel 76 as it was originally planned, in townhouses and walkup flats. We still stand ready to do so. If it is the public purpose to make a portion of this development available to families of low- and moderate-income, that can be established and accomplished by the use of rental subsidies. In fact, in other areas where we are developing, Mr. Chairman, as a requirement and by agreement with the local authority, 10 to 20 percent of the newly developed housing is reserved for persons of low- and moderate-income.

I would like to just digress and respond to two or three questions that were raised in the prior discussion. Over 25 percent of the housing in Southwest was developed for strictly low-income or what was then termed public housing. An additional 20 percent or almost 50 percent

of the housing, when it was developed, qualified and much of it still qualifies today for what is termed moderate-income housing.

Prior to the change in urban renewal—Mr. Fauntroy asked about the consents—we were required to consent. When we sought the consent for the Waterside Mall area or the Town Center shopping area, it was sent back from the District Committee because the church next door had not signed the consent. We were forced to get their consent and give them free parking on the commercial parking lot on Sundays in order to effect the plan change because they felt that the change in the plan would deny them parking which they had.

There are major differences in the plan for residential as proposed and as it was. I submitted in my testimony to the Senate in the last hearing, and I will not burden the committee with it again, but it is available.

LAND WRITE-DOWNS

To correct one other misapprehension, I believe the chairman—or Mr. Fauntroy, rather—mentioned the fact that the residential land was written down. It was not written down. As a prelude to development, it was required that the land be appraised for the use planned on it. It may have been written down from its original price to what you might have gotten for it zoned in a different manner. But each parcel of land, including L'Enfant Plaza, the DOT building, each residential parcel was submitted, and had to go through three independent appraisers.

Where public housing or low-cost housing is allowed, the local agency does, in many instances as a contribution, write the ground down beyond their cost.

SOUTHWEST AREA HOMEOWNERS DISPLACED

As to the homeowner displacement Ms. Counsel, over 76 percent of the people who were removed from the Southwest area were moved to better housing within the District of Columbia. The District and the RLA commissioned a plan, a study, which is called, "Where Are They Now?" It is by a renowned sociologist and professor who was head of the Maryland University School of Sociology, Mr. Daniel Thrush—which goes into detail as to what happened to each one of the families there.

The misnomer that the Southwest was built with the public housing to house families to take care of the women with children who worked, who lived in the Southwest is totally outlandish. If you will check the apartment mix, you will find that one of the problems in the Southwest and one of the prime reasons that St. Dominic's did not build their school is there are very few women with children who live in the area of Southwest from 3rd Street west to 7th and 9th, and from Fort McNair north to the freeway. There are very few children. And, as a matter of fact, when we sold the original townhouses where Mr. Berndtson and the rest of the neighbors moved, we found very few people with children. Most of the apartments were built as small units. So that is a total misstatement. I do not know how those rumors get started and where they were put together.

I will not burden the time of the committee with anything else, but I am available for questions.

Mr. DIGGS. Thank you very much for a very thoughtful and thorough analysis of your position, and I might say, for a very provocative statement.

I am going to ask the General to come forward now and submit his testimony. Then, we will take up the questions following General Quesada's testimony.

So if you could remain at the witness table, Mr. Bresler, just set in one of the other chairs.

Mr. BRESLER. Thank you, sir.

Mr. DIGGS. I am not aware that we have an advance statement from the General. Is that correct?

General QUESADA. Yes, that is correct. Yes, sir.

Mr. DIGG. Does that mean you—

General QUESADA. I have no prepared statement.

Mr. DIGGS. You have no prepared statement.

STATEMENT OF GENERAL E. R. QUESADA, L'ENFANT PLAZA PROPERTIES

General QUESADA. Correct. Thank you, Mr. Chairman.

I am General E. R. Quesada of L'Enfant Plaza Properties, Inc.

Let me go through briefly some of the history of L'Enfant Plaza. In 1963, I, as a businessman seeking an opportunity to invest money, sought a place to erect a building for a client that I thought I had. I looked all over Washington for such availability and my attention was drawn to Southwest Washington.

Being a Washingtonian born and bred, having lived here all of my life except when away on military assignment, I knew the Southwest Washington quite well. It was always a source of sorrow and pain that the area deteriorated to the extent that it did, and that other areas have since deteriorated.

In viewing Southwest Washington and at the time, there was not a great deal to encourage an investor to make a substantial investment as I had in mind. The area had been sitting fallow for more than 5 years. But nevertheless, I did pursue the possibility. I would be less than frank if I did not say that I was influenced in part by a desire to overcome a condition that I found deplorable. I felt that it would be a decent thing to do and, hopefully, a profitable thing to do. And in so doing, I got in contact with Mr. Zeckendorf, who I knew slightly, and pursued the possibility of taking over a part of the leases that he, himself, had.

He had had the same leases that we have got for 5 years and had not performed. He had not performed at all. He was unable to perform sadly because financial conditions were not satisfactory to get financing. Plus the fact that getting financing for any development in Southwest Washington at that time was a very difficult thing to do, as I later found out.

As time went on, Zeckendorf went into bankruptcy. And it might interest the committee to know that we acquired our interest in Southwest Washington through the executor and trustee in bankruptcy.

L'ENFANT PLAZA DEVELOPMENT

We signed five lease agreements with the D.C. Redevelopment Land Agency, which are contracts and the courts have so held. Those contracts required us to do certain things. Whereas Zeckendorf, or Webb & Knapp, had had substantially the same contracts—if not exactly the same, but they were in almost every material way the same—had been unable to perform for 5 years; 15 days after we signed our lease agreements, Mr. Chairman, we were under massive construction. And we did not stop construction—massive construction—until the day we finished.

We fulfilled every single provision of our contract, except one. We were required to start; we were required to finish; we were required to build to certain elevations; we were required to conform to the urban renewal plan; too many things to enumerate here. The only provision of our contract that we did not conform to was that we would complete by a certain date. We completed 2 months before that date.

I might inject here that during the 12 years or more that I have been the head of the L'Enfant Plaza Corp., I have been subjected to harassment, misrepresentation, deception, falsification, half-truths, and in some cases, no truths at all. It has been a very depressing experience, very disappointing experience.

To get back to L'Enfant Plaza, and as an example of how difficult it was to find a developer, those of us who elect to cast our lot in Southwest Washington, believe it or not, in order to get financing for this undertaking, had to give their personal guarantee of the borrowed funds. Mr. Chairman, I defy your committee or staff to find a single case in Washington that resembles what I have just described.

The property is usually the collateral for the borrowing. Our private assets, my house, my home and the house and home, all the assets unrestricted of the few partners that I had were on the line when we made our borrowing. That is an example of what a risky undertaking it was when we entered it.

Before entering this vast undertaking, I went to great pains to study the urban renewal plan. And I found, as anyone would find today if they studied it, that the urban renewal plan of Southwest Washington is not conventional zoning. It is far removed from conventional zoning. The Southwest area project C is a precise area with definite boundaries. And within those boundaries, Mr. Chairman, every single parcel has a prescribed land use. In many cases, the land use is what you can do and is precise. In some cases, it is what you cannot do and it is precise. The urban renewal plan is a very onerous plan to a developer.

Let me give you a single example. In our case, we were only allowed to construct on 60 percent of the land. I defy you to find anyplace else in Washington where zoning puts such a restriction. It is a very onerous restriction. The elevation to which we could construct was limited right to the foot. Certain buildings could be built to 90 feet; other buildings to 130 feet. Certain buildings could not have a hotel; one building could have a hotel. It was a very precise and restrictive covenant in the lease agreement that required us to conform to the plan.

It is not unreasonable for us to ask or to have asked, and I did, if we had to conform to the plan; what assurance do we have that others

would have to conform to the plan. As a prudent businessman, which I thought I was and still think I am, I was concerned that we would do our part, build our buildings after architectural review, undergoing the restrictions that the urban renewal plan imposed, and at some future date, across the street where there were unused parcels, that somebody—for a lack of a better term, and this term was often used—might build a rendering plant. At that time, the rendering plant in Georgetown was a subject of public controversy. So that is why it was used as example, and it was used. It was used by me, and it was used by the executive directors of the urban renewal agency with whom I dealt.

CONSENTS REQUIRED BY RLA

During the 2 years that the negotiations took place for the acquisition of the Zeckendorf properties, which we eventually did through trustee and bankruptcy, we were given assurance not once, but over and over and over, that any change in the urban renewal plan that may affect us required our consent in writing. Now; I am saying that now. I have said that under oath in court proceedings and in depositions.

Mr. Chairman, the first executive director of the D.C. Redevelopment Land Agency, in court proceedings and in depositions and under oath, said the same thing—not once but over and over. Not only did he say it, but he explained why. The reason is unless developers had some reason to believe that there was integrity in the urban renewal plan, they could not attract developers. A developer would be very, very foolish, and we would have been very foolish—and I assure you we would not have been foolish—had we thought for 1 minute that we were required to develop our parcel under the urban renewal plan that existed, knowing everything else that would be around us; and that anybody else or the agency itself across the street or in some other area that might affect us, could change the rules. Nobody would do that in their right mind. No prudent businessman would do that. And I consider myself prudent.

In the course of making this inquiry and having been told that written consent was a requirement to an urban renewal plan from those who may be affected, I wanted to be sure that that was practiced. And, I went to Webb & Knapp and asked them if their consent had been required in certain urban renewal plan changes prior to the time that we became the developers. They told me of course their consent was requested. "Can you give me proof?" I asked. And they did. They showed me consent letters that had been sent to them, asking their written consent for modifications at the agency which was to adopt. And those letters were received from the District of Columbia Redevelopment Land Agency. And I take this opportunity to give them to you, copies of them. I will give them to your clerk, copies of those consent letters. (Retained in committee files, the originals being in the court records.)

It has been said that if such an arrangement were in vogue or were practiced, the area could not be developed. I cannot help but notice that the area is developed and there have been some 26 changes in the urban renewal plan in Southwest Washington. And consent was sought from those who may be affected until recently. And there was never a legal case brought until they stopped seeking the consent of those who

may be affected. And we are in court now on that issue. The committee should expect the court to hand down a decision in some weeks or soon.

Now, as proof of the fact that consents were sought and just a matter of a few days before we signed our lease agreement, the Agency requested that we give our consent—no, that is not quite right. The Agency brought up the fact that consideration was being given to constructing a garage under the so-called overlook. The garage under the so-called overlook is not our property. It is not in the L'Enfant Plaza property. But they were considering changing the urban renewal plan to permit a garage under that parcel. And I asked them, "Why are you bringing that to my attention?" And the General Counsel and the Executive Directors, Mr. Moscoff and Mr. Appleby, specifically, and Mr. Miller, the Chairman of the RLA, specifically were at that meeting. And it was said specifically, "That we are concerned for fear you will withhold your consent if we attempt to change the urban renewal plan to permit a garage under the overlook." They said this.

I said, "Why would we withhold our consent?" Specifically, it was said, "Because it would be in competition with your garage." And so, therefore, we would have the right to withhold consent. And I responded as I look back now in error—they say that no good deed goes unpunished—but nevertheless, I did respond and I said, "If that is what you are worried about, I am perfectly willing to have in our lease agreements a provision whereby we give our consent." And I would like to read it to you because I am sure this is hard to believe under the conditions that prevail.

Now, this is not one lease agreement, Mr. Chairman; this is five. And I will not read all of it; I am referring to paragraph (c) on page 12. The heading of that paragraph is Overlook Garage and Pontiveccio. And the sentence that I wish to bring to your attention is what I will read:

In the event it shall be necessary to modify the urban renewal plan to provide for the development of the aforementioned parking garage and commercial bridge, the redeveloper, for the purposes of title 5—

Very important to note—

the redeveloper, for the purposes of title 5, District of Columbia Code, 1961 edition, section 711, hereby expressly waives its right to object to such a modification of the urban renewal plan as may be necessary to permit the development of the aforementioned garage and commercial bridge and any facilities necessary to serve these structures.

That is proof positive, in addition to the expressed practice, that our rights as a developer and the integrity of the urban renewal plan was established by the provision that requires consent.

I indicated that Mr. Searles, who was the first Executive Director of the RLA, under oath and in court not only said that they represented that to prospective developers and only said that they practiced it with prospective developers, but he also explained why. Otherwise, you could not get any developers. But in addition to the first Executive Director, the second Executive Director, who was Mr. Doyle and who was an executive director with whom I negotiated most of the provisions that are in our lease, he having left and a new executive director

came in. Not one person has ever denied that this was the practice; not one person did.

There are many witnesses that were put on the stand under oath. Not one person denied that his was the practice. Many witnesses that were put on the stand, Mr. Chairman, described how they went through the administrative procedures to determine who may be affected. Many of them did, one after the other. The defendant, which was the RLA or the Government in this case, did not contradict this contention once. They did not produce a witness who contradicted it is what I am saying, who had anything to do with it. They produced a witness, I think, from Boston. He had nothing to do with this plan.

S.W. URBAN RENEWAL PLAN

Now let me digress a minute, Mr. Chairman. The urban renewal plan that is in question here was prepared by the U.S. Government. The act was an act of the Congress of the United States. We did not do it; we had nothing to do with it. I never heard of the urban renewal area until about 2 years before I became a developer. The Congress of the United States debated at great length how Southwest Washington would be redeveloped. The urban renewal agency debated at great length how the Southwest Washington would be redeveloped. It was a Government agency; they developed the plan. And developers had to conform to it.

It has been suggested here by proponents of this legislation that Congress did not mean to adopt a consent provision as it was practiced; that Congress meant that the only consent that was required was the consent of the person who owned the parcel that was being affected. In many cases, that was the RLA itself. In some cases, it was private parties. The Congress considered a bill, S. 13, that provided and contained the word directly affected; and it was rejected; it was not adopted. Another bill was adopted. So you cannot say that Congress meant to adopt something that it rejected. It already rejected the theory that this legislation would establish if enacted. The Congress had debated it. It was one of the principal issues before the Congress, and that provision was rejected. Now, I think the committee ought to be very aware of that.

Now, it had been suggested that the Court of Claims, in some vague way, did not recognize that we had engaged in contracts with the Federal Government. I would like to ask my attorney to read from a decision of the Court of Claims what the Court of Claims really said.

Mr. David Cox is my attorney.

Mr. Cox. If I may, I am reading now from what appears—

General QUESADA. I said the Court of Claims. I meant to say the U.S. Court of Appeals.

Mr. Cox. The U.S. Court of Appeals for the District of Columbia Circuit. This is the decision that was handed down—

Mr. HARRIS. Mr. Chairman, may I inquire? Mr. Chairman, I do have a couple questions I would like very much to ask. I know that the Congress is going into session now. I just wonder at what point I may be able to ask the question how much longer the direct testimony will be pursued?

General QUESADA. I would say about 10 minutes, 15 minutes.

Mr. HARRIS. Mr. Chairman, I note that the direct testimony has been pursued for about 25 minutes. We will have to go over to the floor soon.

Mr. FAUNTROY. Are you prepared to answer questions at this time?

General QUESADA. I am perfectly prepared to answer questions, sir.

Mr. FAUNTROY. Without objection, we will proceed with questions. Mr. Harris, you may proceed.

Mr. HARRIS. Thank you, Mr. Chairman. I appreciate the extemporaneous testimony very much. You have obviously been involved in this for a while, and you have it pretty much lined in your mind as to what your case is.

I am not similarly involved and I only became aware of the legislation, frankly, last year, I believe. But having had some experience in local government raises some interesting questions in my mind with regard to legal powers, powers of municipalities and what have you.

CHANGES IN RLA PLANS

Specifically, my question is this and for the purpose of the record. Is it your contention that under your leasehold agreements and other agreements that you have the power of denying any change in the redevelopment plan by your personal actions?

General QUESADA. Mr. Harris, that question has been asked over and over. And I have answered it over and over. The answer to your direct question is a resounding no.

I do contend and continue to contend that the law says that those parties who have leased or purchased property from the RLA who may be affected by the plan changes, their consent is required, who may be affected. Obviously, everybody is not affected.

Mr. HARRIS. I see. Who makes the determination of being affected? Is that left up to the individual or is that left up to the RLA?

General QUESADA. Historically, the RLA—sir.

Mr. HARRIS. Under your contention, what is your view on it?

General QUESADA. Historically, the RLA did and the RLA should make an administrative examination of those who may be affected. That they did. Every Executive Director who testified confirmed that. Those who actually made that study confirmed it, as well. And if their determination is that we are not affected as an example, and they proceed, my redress is to the courts. My redress is, then, to the courts, that they are arbitrary and capricious. And the law makes that possible for any citizen to take exception to administrative action when they consider it to be arbitrary and capricious.

I have been a head of a large administrative agency, and we have been sued on that ground many times. And I go to great pains to preserve that right to every citizen. And I did go to great pains, and I hold it myself.

Mr. HARRIS. I do not think you have to press that point. We have a good body of law that indicates that agencies have been arbitrary and capricious.

Mr. BRESLER. Mr. Chairman, I might add that the history was that RLA made the determination. Now, in many instances, someone was

not contacted who felt they were affected. For example, in the testimony I gave the church that was next door to us which was using ground that we were going to develop for parking for their parishioners on Sundays came to the Agency, after their consent was not sought, and said, "Wait a minute, we are affected because you are taking away something that we thought we had before; even though it was not our ground, we had a right to park on it."

So we were called into the Agency and they said, "Before we will approve this plan change, you must sign an agreement that you, so long as you control this parcel, will allow the church parishioners free parking on Sundays." And in order to do that, we signed that agreement which was made part of our lease document and, I believe, it is part of the plan also. Following this up, the church then gave their consent. Now, if the Agency had not sought it, I am positive that everything would have stopped while we would have gone through a long and protracted litigation. And all development would have ceased at that point, until the court determined were they really affected or did they have a right to that parking.

Mr. HARRIS. After the determination by the Agency of your case that a property is affected, is it your contention that at that point such owners or leaseholders of those properties have an absolute right to object and effectively deny the change?

General QUESADA. If they considered themselves adversely affected, yes, sir; I do.

Mr. HARRIS. And that that contention cannot be evaluated or the merits of it considered by the governing body or by the RLA, but that even though—

General QUESADA. It can be considered, Mr. Harris. And it might be considered. But if it is considered negatively and a party continues to believe that he has a right and that he has been denied that right by arbitrary and capricious actions, he has access to the courts.

Mr. HARRIS. And you say that it is the party, feeling that it is adversely affected, that must pursue the action in the court, not the RLA?

General QUESADA. If the RLA denies our pleas, then we are only accessed to the courts.

AMENDMENT PROPOSED

Mr. BRESLER. I might add, Mr. Harris, prior to your arrival I suggested that if this bill were to be passed, as it affects the Southwest which is 95 percent developed now, that either the Southwest be stricken from this or the bill be amended to read that in any area that has been 75 percent developed, prior to its being 75 percent developed the agency or whatever legal machinations you want to go through enabling legislation you want to give to the RLA or the District of Columbia could very well be desirable for change in development to respond to a given period. But once it is 75 percent developed, everybody who is down there now has a big stake that should be considered.

Mr. HARRIS. Well, I have a problem, frankly, with this, General. I see a very cumbersome operation of Government here. If, in fact, in the first case, anyone in the redevelopment area with a property right has access to the court with respect to whether or not they are

affected, and after the determination of affected then have access to the court as to any change, it would seem to me that we were putting a type of straitjacket on an urban development area that would almost freeze it, or at least, give those in it such vast governmental powers and economic powers that it would almost be an open invitation for sort of a lump government of type. Does that concern you?

I am just talking as sort of a student of local government a little bit here. I know how things happen that way sometime, although they are not supposed to.

General QUESADA. Let me answer that in two ways. One is that there are many urban renewal plans throughout the country that have in it a provision that we are attempting to protect here, No. 1. We are not unique.

CHANGES IN RLA PLANS

No. 2. Southwest Washington has been a rather successful development. The interpretation that we considered to be right has been in effect ever since the thing was started. And there was no retarding of the development of Southwest Washington until they adopted the other procedure. There have been some 26 urban renewal plan changes with the procedure that we are attempting to defend, when it was in effect. So, you cannot say it does not work because the Southwest urban renewal area stands in bold contrast to all the other urban renewal areas in Washington that do not have comprehensive plans.

Mr. HARRIS. I am a great believer in comprehensive plans. I have some experience in them. However, this is not precisely the problem I have. The problem I have, is to say that the governing body of the District—I consider that the Council and the Mayor—to say that they have no authority to make changes in an element of their jurisdiction would seem to deny them the inherent police powers that a local government usually has, and especially an elected government; I have great problems in seeing them delegate to others without proper legal restrictions such powers of determination. And the powers that you described to me seem to be quite absent. Let me give you specific examples—

General QUESADA. May I interrupt, Mr. Harris?

Mr. HARRIS. Of course.

General QUESADA. Do you mind if I do? I did not mean to be rude.

Mr. HARRIS. Not at all.

General QUESADA. But that is the issue that is before the courts, whether it is a police power or a contract. And maybe my attorney can help in this line.

Mr. Cox. Representative Harris, this very issue was discussed and met squarely by the Court of Appeals, the District of Columbia Circuit, in a decision they did render in August 1977. And what had happened in that case was in a motion for summary judgment in favor of the Government had been granted on this very issue. the constitutional situation and the constitutional problem about a delegation of authority to private individuals. And the court of appeals, in reversing the district court's judgment, stated that the entire redevelopment process resembles not so much the traditional exercise of the police power to control land use as it does a contractual arrangement bind-

ing a set of parties to take actions that are mutually beneficial. Whether or not nearby landowners in a project area are parties to whose benefit an enforceable covenant runs with the land, they could fairly be said to be third-party beneficiaries to a valid contract between the public bodies and any particular landowner.

Redevelopers have made substantial investments in reliance upon this contractual arrangement, and the public has received corresponding benefits.

General QUESADA. I think that goes to your question, Mr. Harris. Forgive my interrupting.

Mr. HARRIS. It does, in fact, I presume relying on some sort of statutory basis or decision. Mr. Chairman, I appreciate your courtesy here. And I just end up with this one final question.

The problems that I see with this current delegation would vest certain decisionmaking powers in landowners in the development area. I have been given an example of one owner in the area who wanted to expand his facilities and was told that another owner in the area would object to the expansion of the facilities unless he opposed this housing project, also. And I do not know whether that is the facts of that matter. But I can see those sorts of situations developing in the area, and I think it would be contrary to proper government and proper land use decisions in the area.

General QUESADA. Mr. Harris, I know who told you—

Mr. HARRIS. You want to respond to that, General Quesada?

General QUESADA. I know the interest that made that representation to you. They misinformed you totally.

Mr. HARRIS. You straighten me out.

General QUESADA. Sir?

Mr. HARRIS. You straighten me out.

General QUESADA. All right. The same interest that informed you that that was the case, which it was not—I deny it categorically; and I have before a judge under oath. The same interest that led you to believe that that was the case had written to Mr. Sterling Tucker when parcel 76 was being considered for low-income housing.

[Reading from a document:]

DEAR MR. TUCKER: We the undersigned Southwest Washington developers have been notified by the Redevelopment Land Agency of the City Council's public hearing on a matter of the proposed modification of the Southwest Project C Urban Renewal Plan.

We are aware of the fact that affected redevelopers must first give their consent to a change in the Urban Renewal Plan before any modification can become effected. Please be advised that such consent has neither been requested nor given.

Further, we are mystified as to why a modification is even being considered when we knew that the RLA had received a proposal from a qualified redeveloper for the redevelopment of the entirety of parcel 76 under existing plan control. It is hard to understand Government planning policies that foster the elimination of an established church in favor of commercial enterprise, whatever they may be.

In the best interest of rapidly completing the development of Southwest, we respectively recommend that the Council cease further consideration of this unnecessary and undesirably modification.

We request that this matter be included in the record of the proceedings of the District of Columbia City Council on April 5.

General QUESADA. And that is signed by the parties that brought this allegation to you, a false allegation.

Now, if that is not enough, let me read another letter. And this is ironic to a point of being ridiculous. This is signed by Mr. Emanuel Fernandez, who is the principal partner and managing partner of Channel Inn, who is seeking relief from this committee in the form of a private bill. The relief that they seek to gain 50 rooms in addition to the present land use is nothing but a private bill designed to bring an economic benefit to the Channel Inn. And nobody can say that it is anything else.

But here is the letter from Mr. Fernandez. It is addressed to me, which he brought to my office, signed in my office; he requested the interview himself. [Reading from a document:]

Dear General Quesada: As you probably know, the undersigned's request for modification in the Southwest Urban Renewal Plan for the Southwest Waterfront area, Project Area C, D-2-B deck site, was approved by the D.C. City Council after its public hearing held on June 30. The approval by the D.C. City Council was the last step in obtaining governmental or quasi-governmental approval necessary to effect the modification in the plan to permit the use of the D-2-B site for transient lodging units and to further permit an increase in the building height and modification of the offstreet parking requirements, as provided for in our request for modification.

As the lessees of D-1 and part of D-2 deck site, we have substantial financial investment in the improvements known as Channel Inn Motel and Pier 7 Restaurant. We have read the complaint filed by L'Enfant Plaza North, Inc., and others, against the District of Columbia Redevelopment Land Agency, and we fully agree with the purported position set forth by the plaintiffs.

This is not us talking; it is the Channel Inn.

We believe that entities who purchase or lease private property from the Redevelopment Land Agency should have the right to object to a proposed change in the plan because of the fact that their original bids and proposals were based on the plan then in effect, and after substantial investment has been made. If a change is requested which might adversely affect a purchaser or lessee or another parcel, then indeed the consent of purchaser or lessee should be required. We have requested that the agency seek your consent for the modification of plan, which the D.C. Council has approved for the D-2-B deck site. The Redevelopment Land Agency has refused, based upon their contention that the requirement of the Act provides only for the consent of purchaser or the lessee of the parcel which is the subject of the modification in the Plan.

We are about to proceed with the construction of an addition to Channel Inn, which will be erected on the D-2-B deck site. We have obtained the necessary financing for the construction of the improvements and are in a position to break ground in the very near future. We would, therefore, appreciate it if you would, in writing, consent to the modification of the plan which permits us to erect transient lodging on the D-2-B site. Such a consent will, of course, in no way prejudice your right or our right to test the position of the D.C. Redevelopment Land Agency because it has failed to request the consent of parties located in the Southwest Urban Renewal Area who might be affected by the plan other than the purchaser or lessee of the particular parcel which is the subject of a proposed change in the plan. We are requesting that you confirm, in writing, that you will not oppose our use of D-2-B site, even if you establish that the agency is required to obtain consent prior to any effective modifications of the plan.

That is from the Channel Inn.

Mr. HARRIS. Did you give such consent?

General QUESADA. I have never been asked for such consent.

Mr. HARRIS. That is what I understood that letter to be asking for.

General QUESADA. The agency must ask for the consent.

Mr. HARRIS. Thank you, Mr. Chairman.

[The full text of the letters referred to follow:]

APRIL 3, 1974.

HON. STERLING TUCKER,
Vice Chairman, D.C. City Council, District Building, Washington, D.C.

DEAR MR. TUCKER: We the undersigned Southwest Waterfront redevelopers have been notified by the Redevelopment Land Agency of the City Council's Public Hearing on the matter of the proposed modification of the Southwest Project C Urban Renewal Plan.

We are aware of the fact that affected redevelopers must first give their consent to a change in the Urban Renewal Plan before any modification can become effective. Please be advised that such consent has neither been requested nor given.

Further, we are mystified as to why a modification is even being considered when we know that the RLA has received a proposal from a qualified redeveloper for the development of the entirety of Parcel 76 under existing Plan controls. It is hard to understand government planning policies that foster the elimination of an established church in favor of commercial enterprises, whatever they may be.

In the best interests of rapidly completing the redevelopment of Southwest, we respectfully recommend that the Council cease further consideration of this unnecessary and undesirable modification.

We request that this letter be included in the record of the proceedings of the District of Columbia City Council on April 5, 1974.

Respectfully,

CARTER-LANHARDT, INC.,

By D. L. MAHAN, *President*,
CURWITZ, INC.,

By THOS. R. OWEN, *President*,
MANGLEN CORP.,

By MANUEL FERNANDEZ,

WATERFRONT ENTERPRISES, INC.,
By WATSON B. RULON.

CHANNEL INN,

650 WATER STREET SW.,

Washington, D.C., August 29, 1974.

Gen. ELWOOD R. QUESADA,
President, The L'Enfant Plaza Corps.,
L'Enfant Plaza Station, Washington, D.C.

DEAR GENERAL QUESADA: As you probably know, the undersigned's request for a modification in the Southwest Urban Renewal Plan for the Southwest Waterfront Area, Project Area C, D-2-B Deck Site was approved by the D.C. City Council after its Public Hearing held July 30, 1974. The approval by the D.C. City Council was the last step in obtaining governmental or quasi-governmental approvals necessary to effect the modification in the Plan to permit the use of the D-2-B Site for transient lodging units and to further permit an increase in the building height and modification of the off-street parking requirements as provided for in our request for modification.

As the Lessees of the D-1 and part of D-2 Deck Site, we have a substantial financial investment in the improvements known as the Channel Inn Motel and Pier 7 Restaurant. We have read the Complaint filed by L'Enfant Plaza North, Inc., et al. against District of Columbia Redevelopment Land Agency and fully agree with and support the position set forth by the Plaintiffs. We believe that entities who purchase or lease property from the Redevelopment Land Agency should have the right to object to a proposed change in the Plan because of the fact that their original bids and proposals were based upon the Plan then in effect and after substantial investment has been made, if a change is requested which might adversely affect a purchaser or lessee of another parcel, then, indeed, the consent of that purchaser or lessee should be required. We have requested that the Agency seek your consent to the modification of Plan which the D.C. City Council has approved for the D-2-B Deck Site. The Redevelopment Land Agency has refused based upon their contention that the requirement of the Act provides only for consent of the purchaser or lessee of the parcel which is the subject of the modification in the Plan.

We are about to proceed with construction of an addition to the Channel Inn Motel which will be erected on the D-2-B Deck Site. We have obtained the necessary financing for the construction of the improvements and are in a position to break ground in the very near future. We would, therefore, appreciate it if you would in writing consent to the modification in the Plan which permits us to erect the transient lodging units on the D-2-B Deck Site. Such a consent will, of course, in no way prejudice your right, or our right, to test the position of the D.C. Redevelopment Land Agency because it has failed to request the consent of parties located in the Southwest Urban Renewal Area who might be affected by the Plan other than the purchaser or lessee of the particular parcel which is the subject of a proposed change in the Plan. We are requesting that you confirm in writing that you will not oppose our use of the D-2-B Site even if you establish that the Agency is required to obtain consents prior to any effective modification of the Plan.

It is our mutual interest to preserve the physical and financial integrity of the Southwest Urban Renewal Area and we, of course, will be happy to work with you in any way we can to preserve that entitlement.

Sincerely yours,

MANUEL FERNANDEZ,
General Partner,

Manglen Limited Partnership, President, Manglen Corp.

Mr. BRESLER. Mr. Harris, I might just add one last thing. You are concerned over the police power. We develop many parcels of ground that are zoned in a certain manner. If we are to finance through FHA financing, they make us adopt a whole set of covenants, which are recorded in the land records. They can only be changed if everybody affected by those covenant agrees. So, if a providence of an area in Northern Virginia would adopt a zone that would be far more intensive, even though the covenants are already there, no one could build on it without the agreement of all the affected parties who were signatories or the beneficiaries of those covenants. So I have gone through this, as well as neighborhood associations, where these things happen, and we are stuck with something that a prior developer put in there.

Mr. HARRIS. Let me say I have gone down that road as to the alternatives of going the covenants route in planned development, and a sophisticated plan development I would offer as last—

Mr. BRESLER. I would agree with you, sir. Yes.

Mr. HARRIS. I would not make the mistake of trying to go the route of covenants as far as controlling land use.

Mr. BRESLER. I agree with you 100 percent. But that is what we were forced to observe, and we do not think that at this late point in the game, as General Quesada so aptly said in the ninth inning, with only two or three parcels to be developed, it should now be changed.

Mr. FAUNTROY. All questions have been answered.

General counsel?

Ms. LUNSFORD. No questions.

ALTERNATIVES TO S.W. LAND USE

Mr. FAUNTROY. I was particularly interested in a comment made by Mr. Bresler at the end of his testimony where he talked about alternatives with respect to low- and middle-income housing and referred to the commercial parking lot that, apparently he feels, might have a more creative use, and made reference to other parcels that he thinks might be reserved for people of low- and moderate- or medium-income that would not interfere with present land use. I wondered if I correctly understood him, and further if I did, would he elaborate upon

that and in his elaboration, indicate what the problem has been with the local government in seeking such land use.

Mr. BRESLER. Well, number one, Mr. Chairman, first, to talk about the parcel of the commercial lot. It has been empty since 1960 some, and as an interim use on a short-term basis, RLA told us they were going to use it for parking. Nobody objected because nothing was in the area. When we constructed the townhouses across the street and the apartments there, the people who moved in said, "How long will that last?" We said, "Not very long."

After much pleading, we finally convinced the Agency to put up a fence, which is in total disrepair. It is still used as a commercial parking lot for workers at HUD, DOT, and other places in the area, which is in total disregard of the energy problem because all it does is encourage people—with a subway stop as the counsel said for the majority, right across the street or across the freeway—to drive to work and leave their cars there. We think that if nothing comes out of this that use should be stopped immediately, and the RLA should be told so. If nothing else, throw it in grass seed or let it become a ball field for the kids or a tennis court for the local residents or some other use than just a parking lot, which is filled up from 7 to 9 every morning and vacated from 4 to 6. Go by after it is empty and take a look at it, ashtrays and people bring trashbags and leave them there; total disregard.

As far as what I suggested, as the District adopted rent control and as the District adopted a condominium freeze, none of which I agree with as a landowner and as an investor and the manager of apartment projects, solve any problem. The District could very well say as has Montgomery County, Md., right across the line, that you, Mr. Developer, must make 10 percent of your apartments available for people of low or moderate income, or elderly or Chinese are anything else you want.

That is all I have to say. Now, most of the projects in the Southwest, because it was urban renewal and you could not get financiers to go in and back it, other than General Quesada who put his own name and the names of his partners on the line for everything, is insured by FHA. Now, what I mean by insured, that means that the FHA insurer, the lender, that if we, the developer, go broke or we make a mistake going into an urban renewal area, that if we bomb out on the mortgage, it will be paid off by the FHA in the form of bonds. That did not work. So they amended the Congress. The Congress very wisely amended the statute and made a new statute for urban renewal, which says no longer will we pay off in bonds; we will pay you, Mr. Lender, the bank, or the pension fund or the insurance company, in cash. So you are not stuck with long-range bonds and lose the benefit of the repayment. Now, if the FHA were to say, we built Waterside Towers, 424 units, 3 buildings; if we took 10 percent, 40 units, and let people move in there who were of low or moderate income or elderly at market rents, which is exactly what is proposed and not the \$600 rent allowed today, which goes up automatically with the cost of living or with petitions, which we cannot do in that building which has been referred to a luxury building—and we think it is—we get \$500, \$100 less. The Government would hand the low- or moderate-income person a certificate; he would move in. Nobody would know whether he was low or moderate income, whether they work on the Hill and make \$18,000 or make \$12,000 as so

many of the people who live in our buildings do. They are clerks; they are GS-4's, 5's, 7's; they are waitresses who work at the Channel Inn or at Hogates across the street; they are nurses from Washington Hospital Center and from D.C. General. Nobody questions where their money is coming from; it could come from their mother-in-law or their uncle or a boyfriend or the Federal Government that supplements their rent so they pay no more than 35 percent of their shelter rent.

Would you believe that we rent apartments at less cost per month than it cost the D.C. Public Housing Authority to make apartments available? Down the street in conditions that are let run rife with disrepair, with broken windows, with no place for the people who live there to complain. But believe me, if we have a broken window or we have roaches, we have a D.C. housing inspector who is down there the next day making us fix it. And we are private enterprise and we must show a profit.

Now, they pay no tax dollars. We pay as much as \$70 a month of the person's rental which goes to the District Government in the form of taxes. New York City very wisely has given people who put these units into the public benefit for low- and moderate-income; they give them complete tax write-offs. Now you give me a tax write-off of \$75 because when I pay the real estate tax on your apartment, I do not make one dime. All I am doing is collecting the tax from you and giving it right back to the District.

So if the District is interested in fulfilling that need and saying to the local resident, "I want to cut your rent by \$50 to \$75," give a tax abatement on the real estate tax, so long as it goes to the benefit of the party moving in.

In Montgomery County, when we develop a piece of ground, we must devote 10 percent of that ground to what they call their medium-income housing development. As a benefit for that development, we get back a 15-percent bonus in density. So if we have a piece of ground that we are going to devote 100 units to, they say, "Fine, you must give us 10 units at a rent we agree on; you cannot sell it at a profit, you cannot ever charge more than what we consider to be the allowed rental. As a payment for that, we will allow you to build 115 units." In some areas, we go as high as 20 to 25 percent because the local government says, "Well, we will give you sewer where no sewer is available; or make us a deal and build us turn key housing which we will buy from you 2 years from now and help you move in your development."

So that is what I was referring to. There are means and there are methods. I believe the District has it within their power to do so, if they are really interested. And I know the Housing Director, Mr. Moore, and Mayor Barry has pledged to it; he has said that he is going to find a way. I think that Congress will be considering a new housing a new housing authority revenue bond, which may be helpful in that when the District finishes its audit under the Eagleton committee, so that it can be sold.

And I would not burden the committee, but there are many other methods for solving the problem of housing without relying solely on public housing which was a mistake; we all agree it was a mistake in the way it was built. And the current programs of putting entire units into one type—elderly, for example. If you told my dad, who is close to 80, that you were going to put him into housing for the elderly, he would feel stigmatized. He does not want to consider himself old, any

more than I want to be in housing for poor people or for white people or for black people. It defies the whole fabric of what this country is about.

Now, let me tell you that if we put a family with two children into an apartment, a two-bedroom apartment, and those kids go out and they mess up the hallways, you know who is going to complain? Not me, their landlord; it is going to be their next-door neighbor. Now, that next-door neighbor does not know whether that child is poor or rich, but if they all live in one area and you know, Mr. Chairman—and history has proved—that in areas where there are complexes of public housing, they get less services; they are looked down upon by the public official who serves them in a degree; they are given the last in the budget appropriations. It becomes a very difficult thing.

So I say there are ways to do it and any time your staff would like to meet with me, I worked in this for years; I have seen these projects be completed; I can take you over to Fort Dupont and show you housing that was built at the same time as we built Waterside Towers, which is your so-called luxury, that ran \$10,000 a unit over without ground, without appliances, that today are a shambles, run by the Housing Authority. And I am not knocking the Authority because the problems that face them are beyond their comprehension or their ability to treat.

I am sorry if I got carried away.

Mr. FAUNTROY [to minority counsel]. Are you trying to get recognition?

Mr. SINGLETON. Yes. I just want to ask Mr. Bresler a question. He stated that Montgomery County, I believe, is making additional benefits available to developers who do something in the public interest. I was curious to know whether or not a similar kind of thing is done in the District of Columbia under the PUD process.

Mr. BRESLER. It may be. I am not familiar with it. Frankly, we have been so tied up in the Southwest Urban Renewal that we really have not moved in any other areas of the District. We have been very nervous in our dealings with District officials in change of government.

I am most pleased—and I did not support Mr. Barry; I do not vote in the District—over his concern and his—I spoke to him just this past week—movement into action in this front. And he is looking for new solutions and I am sure he will be to this committee or other committees of the Congress asking for that support. And I think that the Congress and the Housing Committee need to sit down and reexamine, I would guarantee that nobody knows in this Government today, what the future obligation of section 8 rentals are to the Government. It is astronomical, far greater than our space program because all you consider, you the Congress, is the supplement for the individual year, 25 percent—or maybe even up to 30 percent—of a person's rent, up to \$600. A man making \$6,000, \$8,000, \$10,000 a year can only put \$2,500 of his rent, and if his rental is \$600, that is \$7,200. That means for the next 40 years for each one of those units, the Government says, "We are going to subsidize \$5,000 per unit going in." That is this year alone. Next year, it becomes automatic, and each year it progresses because unlike the strictures we are forced to obey, which are rent control laws, every Federal project is exempted. So you have added an inflationary boot to that thing that could bankrupt the Government. I am not say-

ing that is the wrong way to go or the right way. I think there are better ways.

TRANSFER TO THE DISTRICT OF RLA AUTHORITY

Mr. FAUNTROY. I just have one question for the general. I wonder, General, in view of your long experience in dealing with these matters and dealing with the Hill, what would be your evaluation if somehow the committee found a way of turning this authority over to the local government? I think the general sentiment of this committee as a true believer in home rule—and I have a little problem sitting up here dealing with this matter in view of that concept—I just wondered if you would have any comment to make on that. This committee, ever since the basic home rule bill was adopted, has been attempting to delegate more and more authority to the local government to deal with this issue; this is a local issue. Certainly, as I see it it is a local issue. And I wondered just what you would think about that.

General QUESADA. Mr. Chairman, I really am not well versed on that. So my comment is a very off-the-cuff comment and not studied or thought out at all.

I can see nothing wrong with turning over to the District government the authority and obligation that exist in the Redevelopment Act. I would see something very wrong with turning over to the District government the authority that they consider themselves now not to have, if it meant new rules for those who have invested their hundreds of millions of dollars. If the District government was confined and had the same obligation, moral and otherwise, that are contained in the act and in the urban renewal plan, I could see nothing wrong with that.

But to change the rules of the game, I see something very wrong with that. And you suggested that it is a local subject, I take a little bit of exception to that. I think if the Government does not meet its obligation in one area, people have reason to believe that it will not meet its obligations in other areas. I will admit I am a little old-fashion. I am 75, and I have always believed during my 75 years that a contract should be lived up to and that the Government, above all others, should live up to their contract, and our Constitution provides for it.

When we lose confidence in our Government, and sometimes I think the people of the United States are, it is a very damaging thing. So, if these authorities that are now vested in the RLA and achieved through the act were transferred to the District, I see nothing wrong with that. But if they are modified, I do. I think it would be a disgraceful and wrong and illegal thing that would occur and it would not be to the best interest of the District of Columbia.

Mr. Fauntroy, you know better than I do. The Federal Government does not have the means of overcoming the blight of our cities. There is no way it can do it. It will never do it. The private sector must do it. The private sector is willing to do it. If they can have confidence in local government, and if they think that they can engage in a development that is compensatory—now I am not trying to suggest, and I hope nobody will say they want to make a windfall profit—you have got to offer incentive. The best incentive that this country has ever been able to pursue is to let the private system have an incentive.

The private sector will never go into an area of doubt. The last thing that the private sector wants is aggravation. I would not have gone into this thing in Southwest Washington for all the tea in China had I known I was going to have the problems that I did, that my own Government would lie to me; my own Government would come back and say we did not mean that and now we are changing the rules; my own Government looked at contracts with contempt, and this is what I think you, Mr. Chairman, and the members of this committee, should attempt to do—reestablish the integrity of governing bodies.

Mr. BRESLER. If I may, Mr. Chairman, supplement General Quesada's statement, the District already has an authority and it is the RLA. All they had to do was come to the local neighbors, those affected parties, and say, "We want your consent." The reason, I think, this bill is before the Congress—and I testified at the Senate; I thought it was a travesty to waste your committee's time and the time of the Senate of the United States on something that should have been done in a local manner. Now, I am sure that I would have come forth with certain suggestions. Do not build it 90 feet in height; do not put a 400-car garage there. If it is the Channel Inn, let us look at it in relationship to the townhouses and Waterside; are you really blocking the view from those houses that were laid out there? Instead of going up another 10 feet in height or 15 feet in height, hold it down 8 feet because every bit of development that occurs in the area helps General Quesada, myself and every taxpayer down there. So, I think that the reason for this bill being here is to take away some of the Government that was originally there and some of the responsibilities, so they did not have to go through that. That is all.

General QUESADA. I go down 9th Street and 7th Street just to get my adrenalin running. I live in Northwest Washington. I think it is a disgrace that this city has those areas. Why have they not encouraged the private sector to come in?

Mr. FAUNTROY. I assure you that the private sector wants to do it. But the private sector is as offended as I am. When the Congress of the United States comes forward with a program that is contrary to the provisions of the understanding they had for a reason that I will never understand, a provision of this bill. I do not understand now how the Congress could consider that it is a public purpose to legislate a private bill that gives a private economic benefit to a private party. That is contrary to the public interest and that is a very destructive things to private investors.

I think it is a terrible thing that Congress is even considering this private bill as it is today. I was the Chairman of the Pennsylvania Avenue Development Corporation. I went to great pains, as did the rest of the board, to establish the integrity of the plan. And I assure you, Mr. Chairman, the private sector is not being encouraged by the provisions of this bill. There are a lot of people that want to help.

Thank you Mr. Chairman.

[The judgment of the U.S. Court of Appeals in *L'Enfant Plaza Properties, Inc. v. District of Columbia Redevelopment Land Agency et al.*, app. A, appears on pp. 15-24.]

Mr. FAUNTROY. Thank you very much, gentlemen.

This committee stands adjourned until 9:30 tomorrow morning.

AMEND THE DISTRICT OF COLUMBIA REDEVELOPMENT ACT OF 1945

WEDNESDAY, JUNE 20, 1979

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT AFFAIRS AND BUDGET,
COMMITTEE ON THE DISTRICT OF COLUMBIA,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 1310, Longworth House Office Building, Hon. Walter E. Fauntroy (chairman of the subcommittee) presiding.

Present: Delegate Fauntroy, Representatives Diggs, Harris, and Daniel.

Also present: Stephen Horblitt, subcommittee staff; Elizabeth D. Lunsford, general counsel; James T. Clark, legislative counsel; Joyce F. Williams, staff assistant and Harry M. Singleton, deputy minority counsel.

Mr. FAUNTROY. The Subcommittee on Government Affairs and Budget will come to order. This morning we continue our hearings on H.R. 3336, a bill to amend the District of Columbia Redevelopment Act of 1945.

Yesterday, we heard testimony from Congressman Henry S. Reuss, and from the developer and property owners in the subject urban renewal area. Also, we will receive the statement of Manglen Corp., developer and operator of the Channel Inn.

Today, we conclude the hearing with witnesses representing the District of Columbia Government and the National Corporation for Housing Partnership.

We are very pleased, therefore, to welcome as our first witness this morning, the distinguished Director of the Department of Housing and Community Development of our District of Columbia Government, Mr. Robert L. Moore.

Mr. Moore, it is a real pleasure to welcome you again to the committee, and we have noted your fine record in the discharge of your responsibilities as Director. We have looked forward, with great anticipation, to your statement.

STATEMENT OF ROBERT L. MOORE, DIRECTOR, DISTRICT OF COLUMBIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Mr. MOORE. Thank you very much, Mr. Chairman.

I appreciate this opportunity to come before the committee and I really appreciate your fine introduction and compliment.

Mr. Chairman and members of the subcommittee, I appreciate this opportunity to present the views of the District of Columbia Government on H.R. 3336. The bill is important to the District's housing and development program, and we urge its prompt enactment.

BACKGROUND OF REDEVELOPMENT LAND AGENCY

In 1946, the Congress authorized one of the first land clearance and redevelopment programs in the Nation with the passage of the District of Columbia Redevelopment Act. That law authorizes the Redevelopment Land Agency to acquire and clear land in blighted and substandard housing areas of the District of Columbia, and sell or lease the land for redevelopment in accordance with an areawide plan to be adopted by the National Capital Planning Commission and approved by the Commissioners of the District of Columbia. When President Johnson abolished the Board of Commissioners in 1967, the function of approving redevelopment plans was delegated to the appointed District of Columbia Council. The approval function is now vested in the elected District of Columbia Council, pursuant to the District of Columbia Self-Government Act.

PRESENT LAW

Section 12 of the District of Columbia Redevelopment Act (D.C. Code, title 5, sec. 711) which would be clarified by H.R. 3336, presently provides that an approved redevelopment plan may be modified at any time, provided that "any such modification, as it may affect an area or part thereof which has been sold or leased, shall not become effective without the consent in writing of the purchaser or lessee thereof." We interpret this provision to mean, for example, that when a person purchases or leases land which the plan permits to be used for school or church purposes, the government cannot unilaterally amend the plan and tell the person that he can only build apartments. Interpreted in this way, we believe the provision is an extremely reasonable and necessary restrictions on the right of the government to modify a redevelopment plan.

Some persons, however, seek to give this consent provision a more expansive interpretation. They interpret the provision to mean that when a person purchases or leases land within a redevelopment area, and the government subsequently wants to modify the plan controls with respect to another parcel of land within the same redevelopment area, such an amendment cannot be made without the purchaser's or lessee's consent, no matter how far removed the purchaser's or lessee's land might be from the other parcel of land and no matter what effect the amendment might have on the purchaser's or lessee's land, whether aesthetic, economic, environmental, or otherwise. We do not agree that Congress in enacting the District of Columbia Redevelopment Act intended to allow private purchasers and lessees to veto an amendment to a redevelopment plan which the National Capital Planning Commission and the District of Columbia Council determine to be in the public interest, and which do not directly affect the use and development of land previously purchased or leased.

SOUTHWEST URBAN RENEWAL PLAN FOR PARCEL 76

That brings me to parcel 76, which is bounded by 7th, 9th, and G Streets, SW., and the Southwest Freeway, in Southwest Urban Renewal Area, project C. Before discussing our current redevelopment plan for parcel 76, I would like to describe the history of the plan for this site so that the subcommittee has a clearer understanding of the thoroughness of the redevelopment planning process and the difficulties that result from the ambiguity of the consent provision. As originally adopted and approved, the urban renewal plan for the Southwest Urban Renewal Area, project C provided for housing development on parcel 76. In 1963, the plan was modified to permit semipublic or church-related uses on parcel 76 instead of housing, in order to allow St. Dominic's Church to build a parochial school immediately north of the church. In 1970, however, St. Dominic's decided not to build the school, and it again became necessary to consider what use should be made of parcel 76.

In January 1972, the Redevelopment Land Agency held a public meeting in the Southwest Urban Renewal Area to obtain the views and recommendations of the Southwest community concerning the development of parcel 76. The meeting was very well attended, and statements were presented by 45 individuals, many of whom spoke in a representative capacity. After considering all the statements presented, the Agency's Board of Directors tentatively decided to recommend that the plan be modified to permit parcel 76 to be used for low and moderate income housing. The Redevelopment Land Agency again solicited the views of the public on its tentative decision before making a final recommendation. Statements were received from 36 organizations and individuals.

When the Agency's recommendation was transmitted to the National Capital Planning Commission, the Commission asked for further information concerning the site and its proposed use, and the public was again given an opportunity to present its views before the Commission's Urban Renewal and Housing Committee. The NCPC Committee recommended significant revisions to the proposal submitted by the Redevelopment Land Agency, but accepted the recommendation that the site be used for low and moderate income housing. The Commission followed the recommendation of its committee by adopting an appropriate amendment on January 4, 1973.

COUNCIL HEARINGS

The proposed amendment then went to the District of Columbia Council. The Council, as required by the Redevelopment Act, held a public hearing on the proposal at which 17 organizations and individuals testified, both pro and con.

As a result of questions raised at the public hearing, the Council, on July 17, 1973, referred the proposed amendment back to NCPC for reconsideration. NCPC's Urban Renewal and Housing Committee decided to revise the proposal, and circulated it for comment to those who had submitted statements to the Commission concerning the earlier version and other persons known to be interested. The Commission, after considering the committee's recommendation and

the responses of interested persons, adopted a revised proposal on March 7, 1974.

The revised proposal was the subject of another public hearing by the District of Columbia Council on April 5, 1974. Six persons testified concerning the revised proposal, some representing organizations. The amendment was finally approved by the Council on May 7, 1974. On June 10, 1974, the Redevelopment Land Agency designated the parcel 76 limited partnership, comprised of the National Housing Partnership, Southwest Community Organization, and Tom Harkins, a local builder, as sponsor for the project.

SUPPORT FOR MODIFICATION OF PLAN

It should be evident to the subcommittee that the adoption and approval of an urban renewal plan or obtaining a modification to an approved plan is no small achievement. The planning process provides extensive opportunities for the participation of all interested persons. The 12 members of the National Capital Planning Commission¹ and the 13 members of the District of Columbia Council are independent-minded men and women who search for the public interest. They decided that the public interest would be best served if parcel 76 were used for low and moderate income housing. This view is shared by many members of the Southwest community and by citizens and community organizations from other parts of the city who testified at these hearings. I might also add that, in our view, this decision merely served to restore parcel 76 to its designated use prior to 1963, when the plan controls for parcel 76 were changed from housing to semipublic uses for the benefit of St. Dominic's Church.

Unfortunately, some property owners in Southwest, both residential and commercial, fear that development of low and moderate income housing on parcel 76 will have an adverse effect on their property. After the Redevelopment Land Agency reached this tentative agreement with a sponsor willing to develop parcel 76, but before it could be sold, these property owners filed suit in the U.S. district court to enjoin the development of the site on the grounds that they had not consented to the 1974 plan amendment.

CHANNEL INN EXPANSION

A separately adopted and approved amendment, which is also at issue in the litigation I have referred to, would allow the Channel Inn Motel, located on the Southwest waterfront at Seventh Street, to be expanded from its present size of 100 rooms to 150 rooms. One plaintiff in the case leases space for another Southwest hotel and alleges that the Channel Inn Motel expansion would have a competitive impact on its hotel. There is reason to believe, however, that the objection to the plan amendment concerning the Channel Inn was raised mainly as a matter of legal principle, and that the plaintiff would have consented

¹ The National Capital Planning Commission is composed of the mayor, the Chairman of the District of Columbia Council, the Chairmen of the House and Senate District Committees, three citizens appointed by the President, two citizens appointed by the mayor, the Secretary of the Interior, the Secretary of Defense, the Administrator of the General Services Administration, or their alternates.

if only the Government had admitted that its consent was required and asked for it.

COURT ACTIONS

After hearing arguments concerning the meaning of the consent provision in the Redevelopment Act, the district court concluded that there were no material issues of fact and granted summary judgment for the defendants: RLA, NCPD, and the District of Columbia Council, on April 29, 1976. On appeal, the U.S. Court of Appeals for the District of Columbia Circuit remanded the case for further discovery and a hearing, on August 10, 1977. It should be noted that the U.S. Court of Appeals agreed with the district court that the consent provision in the act was ambiguous on its face, and there was language in the court's decision suggesting that it would be appropriate for Congress to clarify its intent in enacting this provision.

Hearings before the district court were concluded on May 3, 1979, and closing arguments were held on June 8, 1979. Nevertheless, with the possibility of a further appeal, regardless of the decision in the district court, the litigation will probably not be finally concluded for years to come.

Seven years have now elapsed since the first tentative decision to meet a small part of the city's urgent need for decent low and moderate income housing by redevelopment of parcel 76. Unless Congress acts now, several more years may pass before low and moderate income housing can be constructed on parcel 76. In fact, if we cannot move quickly, our plans for parcel 76 may never be accomplished. It is in this context that we urge prompt enactment of H.R. 3336.

H.R. 3336

H.R. 3336 would do two things: Section 1 of the bill would clarify the consent provision of the District of Columbia Redevelopment Act to make it clear that when a plan is to be amended, a redeveloper's consent is required only if the amendment would directly affect the use and development of the land which he has purchased or leased. Section 2 would grant congressional approval for the two specific amendments to the Southwest urban renewal plan which are still tied up in litigation. This would permit the city to proceed with its objective of providing much-needed housing on parcel 76, and permit the Channel Inn to proceed with its long-delayed expansion, thus contributing to the city's economic strength and vitality.

NEED FOR LEGISLATION

Clarification of the consent requirements in the District of Columbia Redevelopment Act is needed not just for parcel 76 and the Channel Inn expansion, but with respect to urban renewal projects throughout the city. Since the beginning of urban renewal in the district, 11 separate urban renewal plans have been amended a total of 97 times. The plan for Southwest urban renewal area project C has been amended 27 times. Each amendment may have involved a number of separate modifications. If written consent was required from every purchaser and lessee in a redevelopment project area who felt that

their property was affected in some way before a plan amendment could become effective, the adoption of plan amendments would be chaotic, expensive, and practically impossible. For example, as of June 1974, Southwest urban renewal area project C included 49 properties and long-term leases acquired from the Redevelopment Land Agency, 180 townhouses owned in fee simple which were acquired from redevelopers, and 402 condominium townhouses and apartments.

Parcel 76 is the last remaining parcel suitable for residential development in the southwest urban renewal area. The site is presently used as an open air parking lot, and the redevelopment plan under consideration provides for the construction of 132 units of housing for low and moderate income families at an approximate cost of \$6 million. The 132 units would consist of 15 one-bedroom units, 102 two-bedroom units, and 15 three-bedroom units. Mortgage insurance and rental assistance funds would be provided through the HUD section 8 program under which the rent to be paid by a family cannot exceed 25 percent of its income. Unfortunately, the HUD District of Columbia area office has notified us that mortgage insurance and rental assistance funds cannot be made available at this time because the parcel 76 plan is not considered a developable project due to the pending litigation.

NEED FOR LOW INCOME HOUSING

There is a clear need for additional low income housing not only in Southwest but throughout the city. Urban renewal carries with it the responsibility for rehousing those persons who have been displaced and for relieving overcrowding in other areas of the city which results from displacement. Over 4,600 households, primarily low income families, were displaced as a result of the Southwest urban renewal plan. To date, of the 5,839 units of housing that have been redeveloped in southwest urban renewal area, project C, only 315, or less than 5.4 percent, are subsidized housing units for low and moderate income families. In addition, there are only 929 units of public housing in the remainder of Southwest. Construction of the 132 units of low and moderate income housing on parcel 76 would not only help those people who were displaced 10 to 15 years ago to come back to Southwest, but would also provide a more balanced cross-section of housing in that area of the city.

We do not believe that the development of parcel 76, as provided for in the Southwest urban renewal plan, would have an adverse impact on the community or on other developments in that area. The housing density proposed for parcel 76 would be significantly lower than the density of some other housing sites in Southwest urban renewal area, project C.

Flexibility in urban renewal plans is essential. Unanticipated demographic and economic changes make it difficult for the city and redevelopers to look more than a few years in the future in predicting market and redevelopment needs. Complex developments often require changes during later planning stages and during construction itself. In addition, financing problems may develop or an expected source of financing may not materialize. Redevelopers must have rea-

sonable assurances that changing needs can be met through plan amendments. Redevelopers would be unwilling to commit their resources if plan amendments were subject to veto power of a single purchaser or lessee. This veto power could be exercised irrespective of how beneficial the amendment would be to the city, in comparison with the adverse impact, if any, on the purchaser or lessee, and notwithstanding the fact that the amendment was deemed necessary or desirable by the duly-elected public officials after a process which included adequate opportunities for other purchasers and lessees and the community to express their concerns. Each amendment might result in litigation for one reason or another. The present litigation over parcel 76 shows that such suits are prolonged and result in enormous increases in project costs. The estimated cost of the housing project in parcel 76 has already increased approximately 60 percent since the litigation was initiated in 1974. Under such conditions, the marketability of undeveloped sites would be greatly diminished, and redevelopment would be delayed, if not precluded.

JURISDICTION OF THE CONGRESS HEREIN

I would like to make one further point before closing since H.R. 3336 appears to deal with purely local matters, why is it not before the Council of the District of Columbia rather than the Congress? Section 602 of the Self-Government Act prohibits the Council from enacting any legislation which concerns a function of the United States. As I mentioned previously, the Redevelopment Act requires that urban renewal plans and amendments be initially adopted by the National Capital Planning Commission, a Federal agency. For that reason, a legislative amendment of an urban renewal plan, as proposed in section 2 of H.R. 3336, could be construed as affecting a function of the United States, and thus lying outside the scope of the Council's legislative authority. Since one of the purposes of H.R. 3336 is to put an end to the litigation which is delaying us from getting on with the business of redeveloping the city and meeting our citizens' housing needs, we do not wish to give anyone a pretext for additional litigation. For that reason, we think it is appropriate that this legislation be enacted by the Congress, whose authority in this area is not open to challenge.

Thank you, Mr. Chairman. That concludes my testimony. I would be happy to answer any questions that you may have.

HOUSING PLANS FOR PARCEL 76

Mr. FAUNTROY. Thank you so very much, Mr. Moore, for actually magnificent testimony, richly sprinkled with facts and figures, which correct for the record erroneous testimony which was given here yesterday. Opponents of this legislation led the committee to believe that the housing plan for parcel 76 consisted of 400 units in a nine-story high-rise. I am very pleased that as Director of the city's Department of Housing and Community Development you have properly informed the committee that, contrary to 400 units, you plan only 132 units; and that contrary to a nine-story high rise, you

contemplate townhouses in the percentages that you have suggested here, which certainly will be refreshing information for the members of the committee, and for that we are very grateful to you.

As chairman, I am also impressed by the fact that the litigation which this legislation seeks to eliminate has been responsible for a 60-percent increase in the cost of the housing which both the City Council, National Capital Planning Commission, and your department, in your well-considered judgment, feel need to be built on this parcel.

I am, finally, grateful to you for having point out to the committee that in this area, this pioneering urban renewal area, there were some 4,600 households, primarily low-income, who were displaced; and that of the 5,839 units that have been redeveloped, only 314, or 5.4 percent, are subsidized units for low- and moderate-income families. That kind of information certainly enlightens the committee, and for that I, as Chair, am extremely grateful to you.

Let me just, for the record, have you answers to a few questions which will certainly be of interest to the members of the committee, and subsequently to the members of the full House, when we carry this measure to the floor.

What plans have been designed by developers of parcel 76 that are available now for public review?

Mr. MOORE. Mr. Chairman, I would ask the assistance of the developers in presenting to the committee their plans and perspectives on the development that would graphically illustrate where the parcel is located, what the land use would be, and how the proposed exteriors of the facilities would look.

Mr. FAUNTROY. Would you kindly identify yourself for the record, sir.

Mr. COMINGS. Yes. My name is William Comings; I am executive vice president of the National Corporation for Housing Partnerships.

This, Mr. Chairman, is a site plan. [Indicating.] Here is the Southwest Freeway; here is Seventh Street; G Street, which ends in the cold south. What you have here is essentially a townhouse and townhouse-like plan that essentially follows the broader property. It is designed to complement and fit into the overall neighborhood. You have, as has been stated, 132 dwelling units; you have 71 parking spaces; and you have a completed development that we believe is highly compatible with the overall Southwest area.

Mr. FAUNTROY. It looks like the housing across the street.

Mr. Comings, is there a chance that those buildings would cast a shadow on the housing across the street?

Mr. COMINGS. I am not an architect, but given the width of the street and the orientation, I think it is most unlikely.

Mr. FAUNTROY. Thank you.

NATURE OF PLANNED CONSTRUCTION

Mr. Moore, are there any additional plans or modifications since last year's hearings on this subjects?

Mr. MOORE. I am not aware of any major changes other than the changes of firming up the site plan and making some changes on that site, which I think you will hear testimony on today, and the firming up of some architectural perspectives on the exteriors of the buildings.

Mr. FAUNTROY. As I indicated in yesterday's hearing, there was some concern on the part of the members of the committee, and I suspect later on the part of the members of the House, as to the relative cost of the construction, the number of inhabitants, the number of apartment units, the average size, the income level of the dwellers, and provision for the elderly. I wonder if you would be in a position to respond to those kinds of queries on the part of the members of this committee?

Mr. MOORE. Thank you, Mr. Chairman. I will respond.

The unit mix overall is essentially a small family development. Of the 132 units, 15 will be 1 bedroom, 102 units would be 2 bedrooms, and only 15 units will be 3 bedrooms. So, clearly, by any definition, it is a small family development of a lowrise nature. The other part of your question was the provision for the elderly, which would be essentially the one bedrooms, and probably a percentage of the two; which would be occupied in the main by the elderly.

Either of those ones or singles, and the twos for people who are elderly and may need some other service-provider living with them, could potentially occupy the two bedrooms, with the majority of the twos going to small families, and all the threes going to families.

The quality of the construction, of the section 8 program, is essentially a private program. The Federal Government plays a glue role in the sense that of the section 8 assistance is provided in behalf of the tenant to the developer, the financing is private, the construction is private, and the Federal Government provides a housing assistance payment contract for the term of the mortgage, in full term with the mortgage. It provides the opportunity to do what you see here graphically, and that is to build in a community, and to design a project in relationship to the community so it will not do any violence to the style of housing in that community with something that would stand out so graphically from the rest of the housing types.

SUBSIDY

The final question is the subsidy. People receive various levels of subsidy, in fact, section 8 is designed to encourage the juxtaposition of families and individuals living on fixed incomes along with people who are employed. So it provides an opportunity to have an income mix, a family size mix, on the same property that we believe, and have come to learn over the years in our field, that it is healthy for a development to have those kinds of mixes.

Mr. FAUNTROY. Thank you so much. Now, will there be any difference in the quality of the construction as far as the units that would be inhabited by low-income persons, and those inhabited by moderate income persons?

Mr. MOORE. No, Mr. Chairman, there will not be any difference in the level of construction. One of the Federal guidelines provides some standards which the architect and developers have to meet. Additionally, it is required that we work with the community. They have some input as to how this development is expressed. And with that input and the Federal Standards, I do not think there will be any difference in the quality of the construction or of the quality of the unit occupied by one income group or another.

Mr. FAUNTROY. An opponent of the legislation yesterday, who is a builder and developer, Mr. Bresler, indicated that he builds units not for low-, moderate-, or high-income persons, he builds units for people, and for that reason I wonder if there would be any substantial or substantive difference between the quality of the properties on the west side of Seventh Street and those immediately on the east side.

Mr. MOORE. Well, I agree in part with what Mr. Bresler said, but I would add on something to it. There is no difference on the development of the project, it is only constrained by the amount of dollars that are available that are shrinking due to this time lag that we are into. So there is no such thing as a low-income house, it is the person who lives in there who has low income. We try to build a standard property. Exteriorly I do not see any difference, it may not have all the internal appliance amenities that some other private higher incomes may put in themselves. It would be a standard unit which meets all the Federal standards, the city standards, and I think a development which we can all be proud of when it is completed and managed.

PLANNED CONSTRUCTION ON PARCEL 76

Mr. FAUNTROY. I am, quite frankly, curious as to how the persons who testified yesterday could be so ignorant of the plans that we have for development of parcel 76. I wonder if you would care to outline to me the process by which you will inform citizens of the entire area, for information purposes, of what is planned on parcel 76?

Mr. MOORE. Thank you, Mr. Chairman. The essential model is for a series of public hearings that the development will have to have with the entire community to present preliminary design strategy. Generally the community will appoint a committee, a broad-based committee of residents who will work with the developer on the details of the planning and the site, and of the units. And then, at the final stages, to bring that full plan back to the community for their review and comment prior to the final proposal.

So this is a broad-based process. Let me just say one thing, Mr. Chairman. I think the issue boils down to who expresses the public interest. Whether or not a broad-based elected organization, such as the District of Columbia City Council is, a Federal body, as the NCPC is, expresses the public interest, or does an individual express that interest. We support the claim that the Council and the NCPC have expressed the public interest, and there has been sufficient expression of their interest by the residents of that community in support of this particular project. I am not sure, and I can not lay any credibility to how those developers can be so misinformed about the property, except that one can define one's own perception of the world, and make that to be some huge, humongous project that none of us want to see happen in the District of Columbia.

DISTRICT'S HOUSING POLICY

Mr. FAUNTROY. Mr. Moore, I wonder if you would describe to us how low- and moderate-income housing plans for parcel 76 fit into our new administration's housing and development policy?

Mr. MOORE. Mr. Chairman, in fact, yesterday, the Mayor issued a draft comprehensive housing policy for the District of Columbia. We cite some serious, serious problems, both in terms of massive loss of rental housing, over 20,000 units, over significant and increasing housing costs. We show some shortages of some 30,000 units for moderate, and modest means; we show a great need, and the Mayor has spent much time in the policy pointing to the need for us to move expeditiously to develop every vacant site that we can as appropriate for housing uses, to reduce the pressure off the market and to reduce some of the housing crises that we currently find ourselves in.

But this fits in both to the size, we are supporting small, well-designed development projects that are integrated, in economically integrated communities, that are near services which this project is. So all of the points that we expressed relative to housing development, this project will score high, on any criteria that you would use.

ROLE OF CONGRESS

Mr. FAUNTROY. Some concern has been expressed about the role of Congress in urban renewal plan modification. I wonder if you would care to state the District's position as it relates to the Congress role in this modification process?

Mr. MOORE. Mr. Chairman, we of the District do not like to place this burden on the Congress in any form, if we had the authority to clarify with our own rules, under the Home Rule Act, but we do not. We think that the congressional intent in the Redevelopment Act was clearly for participation of a broad segment of the community in determining plan changes in the urban renewal plan, but did not anticipate veto by any one user of a parcel, of an entire southwest, or any large urban renewal area. Therefore, we have come to the Congress for a clarification of that intent. And we think it is appropriate that Congress enact this law that we are asking to be changed.

Mr. FAUNTROY. So that you do not see any future involvement necessarily by the Congress in modification matters, once this is clarified?

Mr. MOORE. No, Mr. Chairman, I think this clarification would benefit us for all the other parcels that we have.

Mr. FAUNTROY. In your view, do you think that this bill would nullify, so to speak, the statutory rights of property owners?

Mr. MOORE. No, it does not. I think the apartment owners still have their rights, we have not made any other changes to their rights, except we defined it, and this bill seeks to define it in a more clear fashion, that their rights do not extend to a veto power on one of the uses that we do have appeal, and you have provisions, so there is no adverse impact on you; that the District government can not unilaterally act on you in any way to cause economic, social, or other kind of harm. But you, therefore, do not have that kind of—the reach of your protection does not go to stopping any use that you may frivolously want to stop within the urban renewal area.

REMAINING SITES IN SOUTHWEST AREA

Mr. FAUNTROY. Is parcel 76 the last remaining site in Southwest to be developed?

Mr. MOORE. No, Mr. Chairman, we have a number of other sites that are yet to be developed. I have a list that I will submit for the record, that was submitted last year, which indicates the remaining sites that are in the Southwest urban renewal area.

[The list referred to follows:]

ADDITIONAL SITES AVAILABLE IN SOUTHWEST FOR DEVELOPMENT¹

Parcel 27.—D between 3rd and 4th S.W. *Site:* 2.39 Acres. *Permitted Use:* Office.

Parcel 36.—2nd and D St. S.W. *Site:* 1.06 Acres. *Permitted Use:* Community.

Parcel 43.—Canal St and D St. *Site:* 3.03 Acres. *Permitted Use:* Community.

Parcels 47 and 49.—D St. between 12th and 14th, and Maine between 12th and 14th. *Site:* 10.7 Acres. *Permitted Use:* Office and Hotel.

Parcel 57-2.—D St. between 9th and 10th. *Site:* 1.66 Acres. *Permitted Use:* Office.

Parcel 81.—9th and Maine. *Site:* 1.32 Acres. *Permitted Use:* Community.

Parcel 90 C-3-6.—700 Water St S.W. *Site:* .33 Acres. *Permitted Use:* Restaurant now involved in litigation.

COSTS OF DEVELOPMENT

Mr. FAUNTROY. You have indicated that we have had an increase of some 60 percent in cost on the development of the parcel since the litigation process began. I wonder if you would care to comment on the increased cost involved should the delay in resolving this issue be continued, let us say, through further appeals?

Mr. MOORE. Mr. Chairman, I believe that we have had some over 60-percent increase in cost now, with current inflation and the cost of goods and services, I project about a 2-percent increase per month, in the construction costs.

Mr. FAUNTROY. What is the District government's reaction and position about the effect of congressional action on housing matters under litigation?

Mr. MOORE. Well, we are seeking only a very limited amount of congressional involvement to clarify the law that would prevent us from having to come back additionally for further clarification. But we think this limited, specifically focused involvement is needed for the clarification purposes which I have stated.

Mr. FAUNTROY. And you see no constitutional or contractual questions raised?

Mr. MOORE. I do not, Mr. Chairman.

Mr. FAUNTROY. What is the District's response to economic concerns raised during the City Council's hearings in 1974 and 1978, hearings here on the Hill, regarding, first of all, the present value of parcel 76?

Mr. MOORE. Well, I would have to seek data on the present value of these. As you know, Mr. Chairman, the urban renewal program provides that we do not, for housing purposes, go just for value, that we go—the issue is that we write down the cost land to enable housing to develop at lower cost, so the marketability is broader, a larger broader range of District residences. So the value, in that sense, does not express itself above the need for housing, so I would have to give you, to submit for the record data on the exact value. I wanted to express how the process works.

¹ None of these parcels is available for "residential" use. "Community" use is defined as for governmental, semi-public, and non-profit use.

Mr. FAUNTROY. I see. Finally, I would like to deal with a couple of questions around the "financial soundness" of parcel 76; namely, the cost if the city is selling the land to the developer, and the minimum rents needed to support the financing of the finished product.

Mr. MOORE. Mr. Chairman, the final disposition price to the developers I do not think has been made until we get a little further down the road. The financial soundness of the project is supported, one, by the write down of land costs by the District of Columbia; and, two, the provision of section 8, housing assistance rents, that are made in behalf of the tenant to the owner. Those rents are approved. For a one-bedroom, those rents are, projecting at—in the new program—at \$384 per month, for a two-bedroom, at \$456, and for a three-bedroom, at \$492, of which residents pay 25 percent of income; which may mean, in some cases, residents paying \$250 and receiving a subsidy for the remainder; in other cases, residents paying a very small percentage and being subsidized.

The program is structured so that the rent is certified each year, and the tenant, if he and she gain in income, then the Government percentage shrinks. In that sense, the financial soundness is characterized by the housing subsidy. Additionally, there is no full faith and credit with the Federal Government on this particular piece of property, so that the private sector stands alone.

Mr. FAUNTROY. All right. I just have two further questions on the question of cost. The Members of the Congress are always interested in the cost of a particular piece of legislation. While I think you have adequately pointed out that the cost of not passing this legislation is likely to be 2 percent per month, in terms of the prospect of ever providing housing in this much-needed range for the people of the city, but I wonder if you would estimate the cost of this legislation if enacted into law for this year. What would it cost the taxpayers of the Nation?

Mr. MOORE. Let me see if I am clear, Mr. Chairman. Are you talking about construction costs and mortgage costs, or are you talking about the cost of additional litigation, which is considerable, to the public.

Mr. FAUNTROY. I think the Members would be more interested in the project cost, assuming the legislation passes. Obviously, the cost would be much larger, in terms of carrying out the public purpose, were we to go to an extended period of litigation on the question.

Mr. MOORE. Our estimated mortgage, Mr. Chairman, on the project at this point is \$5.1 million, which gets us to an estimated cost per unit—of mortgage costs and including all the costs—of \$39,000 per unit, or estimated construction costs of \$35.31 per square foot. Those costs, again, the delay in the passage of this legislation will only tend to push those costs up, I would suggest, 2 percent a month.

Mr. FAUNTROY. What would be the level of subsidization which would go on from Federal resources?

Mr. MOORE. It would be 100 percent.

Mr. FAUNTROY. 100 percent?

Mr. MOORE. Subsidy.

Mr. FAUNTROY. And can you estimate how much, in cash dollars, at this point, for 132 units, that might be?

Mr. MOORE. Well, we have estimated that the operating costs, Mr. Chairman, would be around \$1,229 per unit per year. Of that one would suggest that 80 percent of that cost would be met by the Federal Government and 20 percent of that cost would be met by residents. But, again, the subsidy varies by the income of the individual; and so, therefore, until we get further into design and making some judgments, the exact projection cannot be made.

Mr. FAUNTROY. Thank you so very much, Mr. Moore, for your excellent testimony.

Counsel, do you have questions of the witness?

Mr. SINGLETON. Yes, Mr. Chairman, I have several questions for Mr. Moore.

SECTION 8 HOUSING

One, I would just like to follow up on your line of questioning concerning the cost. I am not at all that familiar with section 8 housing, and perhaps maybe you can explain the nuances for me, and perhaps many of the members may not be as well informed. Is there a possibility—let me back up and say that we know that the original plan is to have low and moderate income housing here on parcel 76; is there a possibility that, because of the delay in the construction of the units, that the cost will change the designation—the cost per unit, that is—would change the designation of these units from low and moderate income to luxury. Are we talking about a Federal subsidy for construction as well as a Federal subsidy for rents as well?

Mr. MOORE. Well, no. Let me see if I can explain, counsel, the structure of the section 8 program. The section 8 program was authorized in the Housing and Community Development Act amendments of 1974, and what it did was make a departure from previous programs that were characterized by, one, full faith and credit of the Federal Government. We have had serious problems with properties that go into default and, therefore, developers were made whole, or owners were made whole, because the Federal Government has insured it. As opposed to taking that strategy, the section 8 program goes in a different direction, it says, private market—if you build 132 units, and you make them available to low and moderate income families, we will pay you a certain amount of subsidy per unit for the period of your mortgage.

And that is, essentially, the subsidy; the mortgage, the construction costs are governed by what those monthly rents are. If the project defaults, the developer loses. The contract is withdrawn by the Department of Housing and Urban Development. So, there is a minimum of Federal and, in that sense, taxpayer exposure to default or foreclosure, but also a maximum flexibility to the tenant, because the tenant is subsidized. And it says that as long as a tenant who is eligible is living in that unit, then you receive subsidy. You must treat him as any other private management company would, provide the same services, because when that tenant decides to leave, you do not have any more subsidy. This creates, I think, a dynamic between the tenant and the owner of fair treatment and parity, in terms of the program. So the total costs of the project are only governed by the section 8, in this instance, new construction rents, which are updated annually by the Department of Housing and Urban Development.

COSTS AND RENTS

Mr. SINGLETON. Now, clarify something, you stated that the costs of construction would be governed by the rents.

Mr. MOORE. That is right. The total cost.

Mr. SINGLETON. Now, is there some limit on the Federal contribution toward the construction costs? What I am trying to get at here is the profit level for a developer to get in here and build these things. It seems to me at some point, where costs are becoming so great to build these apartments, to continue a designation as low and moderate income is going to unduly compress the profit that the developer may reap, hence changing the designation.

Mr. MOORE. Well, in this instance, counsel, we have a nonprofit developer. Additionally, the return is very much controlled by HUD, in terms of the regulations. It makes 8 percent return, in terms of the new proposed regulations, the rule, so that profiteering can be cut down.

Let me go back to the other question of how the rents play a part in the maximum mortgage. The multiples of that rent determine what the economics are, in terms of what maximum mortgage can you have after you look at which your expenses will be to operate this project and to manage it. How much money is available to pay debt service? That amount that is available to pay debt service determines the maximum mortgage. As inflation and other market activities begin to eat at that ability to pay debt service, then you shrink the project and one or two things happen; either you have a project that does not get done or you begin to make design considerations and reductions in the quality of the project. That is why it is important for Congress to move forward with this legislation so a design can occur that is compatible with that community, and that there do not have to be, at this point in time, considerations or reductions in the quality of the construction to bring the project into the budget. We are not at that point, but if we do not move with alacrity, we will begin to reach that point.

But, again, each year, the Congress has authorized the Department of Housing and Urban Development to modify its fair market rents in consideration of whether the rents in the general—say, Washington area—so those rents are really set by trends as opposed to by project-specific activities.

Mr. SINGLETON. Thank you. I think I have it straight now, more straight than I had it before.

REMAINING PARCELS TO BE DEVELOPED

You stated that there are approximately nine parcels yet to be developed; is that correct?

Mr. MOORE. That is correct.

Mr. SINGLETON. What percentage of the completion would you say that that puts our project area C in at this point?

Mr. MOORE. Well, counsel, it is difficult for me to tell. We are nearing the end of this project. Most certainly, the Department is pushing as hard as it can to get this project completed, one, because we think

it is good for the community to complete something and get it behind you; and the other issue is that it has a definite impact on the amount and availability of community development block grant funds for the District.

As long as we have urban renewal projects outstanding and not closed, then HUD withholds 20 percent of our community development block grant entitlement, which is a considerable amount of money, that restricts us in our flexibility to do other things, both in Southwest and other parts of the city that are in critical need of funds. So, I would suggest that we are about 80 to 85 percent complete in the Southwest urban renewal area.

Mr. SINGLETON. Exclusive of the lawsuit that has been brought over parcel 76, how would you characterize the development; has it been fairly smoothly running up to this point?

Mr. MOORE. Well, the development has run well; I am not familiar with all the history of it, but it appears to have run well. I do live in Southwest. The facilities are there. There are some completions, such as Metro stops and other issues to be completed, but at the same time the area is also changing. Due to high pressures in the market, we have a significant contemplated condominium conversion which will present further serious problems on moderate-income families, current residents of the new developments in Southwest, where the proposed conversions will be at very, very high cost. And I think we are going to be in for another round of looking at housing issues in Southwest, not only for low income, but those who are of middle income who may have the capacity to be displaced.

Mr. SINGLETON. But in terms of the redevelopment process itself, you think it has been fairly smooth?

Mr. MOORE. I think it has been fairly smooth. As I read the history, though, there are a lot of problems and inequities, in terms of the right to return for residents, the relocation problems, which I think are well known; but the development, actual construction appears to have moved fairly smoothly.

CONSENT REQUIRED TO MODIFY RLA PLANS

Mr. SINGLETON. We have heard testimony, both during these hearings and last year on an identical piece of legislation, which stated that RLA had at one time proceeded in a fashion to amend the redevelopment plan similar to what the plaintiffs to the lawsuit contend should be the modification procedure.

On page 8 of your testimony, you made a statement that, and I quote,

If written consent was required from every purchaser or lessee in the redevelopment project area who felt that their property was affected in some way before a plan amendment could become effective, the adoption of plan amendments would be chaotic, expensive, and practically impossible.

I was wondering if you could clarify that statement for me a bit more, in light of the fact that the redevelopment project area is substantially completed, it has been fairly smooth running to date, and I guess up until some point here—at least when the litigation started—RLA had, in fact, been seeking the consent of many different owners

and lessees of property within the redevelopment tract area whom they deemed to be affected by the change.

Mr. MOORE. Well, let me see if I can put that statement, Counsel, in a better context. It reads,

If written consent was required from every purchaser or lessee in the redevelopment project area who thought their property rights would be affected, and so forth. In all redevelopment activity, there is no static point at which a project is frozen. For example, even though we are still in the process of trying to close out the Southwest urban renewal project, other activities are still occurring; for example, a hotel expansion. A hotel intends to expand to capture a larger percentage of the market and to respond to what it sees as income-capture potentials. That requires a modification, not to shrink it or to close it out, but to expand it and to keep the plan as a living document that relates to market forces.

And the Department has tried to get consensus from other users as to this particular use and how its complementary or adverse impact may be assessed. What it is saying here is that that consensus, an attempt to get review and comment—does that mean veto, that one person can veto an entire use or someone else's expansion or change of an urban renewal plan, even when the District of Columbia City Council and NCPC, to express the public interest, have voted to approve it; that the public interest is much broader than a single individual's questions, particularly when that individual cannot show, clearly, economic harm to his development but more in the sense of land use control?

We are saying here that, in the interpretation of the plaintiff in this case, would require us to get written consent and therefore would be a very chaotic development process all until we complete the urban renewal development in the Southwest area.

Mr. SINGLETON. Well, I guess that is exactly my point, Mr. Moore. That judging from the things that I heard in the testimony and read that what in fact happened was that there was written consent sought from the various individuals, and, despite that fact, we still had a fairly smooth-running development, and one that is substantially completed now.

Mr. MOORE. Well, I wonder about that, too, and I just relate that, to be very frank, that may make it seem that this is totally related to whether or not this project is low or moderate income. I think that is the issue. In all other uses there has been no complaint—why now?

Mr. SINGLETON. OK. Thank you, Mr. Moore. I appreciate your frankness. Thank you.

Mr. FAUNTROY. And thank you again.

Mr. MOORE. Thank you, Mr. Chairman.

Mr. FAUNTROY. Mr. Moore, I am in sort of a time bind. I am going to ask that Mr. Comings who fortunately came before us just a little while ago, in response to a question, will come now to testify. We go in at 11, and the House will be under the 5-minute rule, so I would like, prior to 11, to move to markup on this question.

Accordingly, Mr. Comings, we have your statement; we have heard the presentation which has certainly clarified a great deal of important information for us, and, if you do not mind, I would like for you to

submit your statement for the record and make any additional comments which you feel appropriate to prepare the committee to vote.

STATEMENT OF WILLIAM D. COMINGS, EXECUTIVE VICE PRESIDENT, NATIONAL CORPORATION FOR HOUSING PARTNERSHIPS

Mr. COMINGS. Mr. Chairman, thank you.

I will act upon your statement and file my statement for the record. I would like to introduce Mr. Joseph Howell, who is NHP's Director of Development.

I just want to say a couple of things in addition to my prepared statement.

Mr. FAUNTROY. Without objection, Mr. Comings' statement will be entered in the record at this point.

[The prepared statement of William D. Comings follows:]

PREPARED STATEMENT OF WILLIAM D. COMINGS

Mr. Chairman and members of the Subcommittee, my name is Bill Comings and I am Executive Vice President of the National Corporation for Housing Partnerships. My firm is a co-sponsor of the proposed Parcel 76 development, along with Harkins Associates and the Southwest Community House.

DEVELOPMENT PLANS

In my testimony I would first like to describe for you what we plan to build on the property. Our plans, which have carefully been worked out in conjunction with residents of the Southwest Community, call for a low density development of 132 townhouses. Approximately 90 percent of these units are one and two-bedroom units reserved for the elderly and small families. The balance are three-bedroom units.

Recognizing that the project will play an important role in the Southwest Urban Renewal Plan, we have developed an architectural concept which we believe will enhance the surrounding area. Designed by Louis Sauer & Associates of Philadelphia, the concept embodies human scale design utilizing separate entrances to each unit, private fenced-in yards, tot lots, shaded seating areas, and extensive landscaping. There will also be a community center where programs, recreational activities and services will be provided by the Southwest Community House. Though it is our intent for the project to utilize Section 8 housing assistance payments, we have tried hard to design the project in such a way that its appearance will not suggest that it is any different in concept from the other apartments and houses that are near by. I have a rendering of the project and site plan which I would like to show you now. [SHOWING PLANS]

The design has received much acclaim throughout the Southwest Community and the District Government; and we believe that in every respect, it will benefit rather than detract from the surrounding community.

MIXED INCOME DEVELOPMENT

There are two important points I would like to stress about our proposal. The first is that it is incorrect to refer to the proposal as a "low income" development. A more correct term would be "mixed income" development. The Section 8 program provides rental assistance based on a sliding scale and encourages residents of varying incomes to live in a development. If the Parcel 76 proposal were to open its doors today, a family of four earning as much as \$18,000 would be eligible for occupancy. A single person elderly household occupying a one-bedroom unit would have an income as high as \$12,600. Because tenants pay only 25 percent of their income for rent, the Section 8 program also enables lower-income people to reside in the building without creating a severe economic strain on them.

Because of the unique location of Parcel 76, we believe that we will be able to achieve a tenant mix that is genuinely economically integrated. Moreover, the small size of the development and the fact that the churches and community-based groups are enthusiastically supporting the proposal mean that there is every indication that the new residents will become accepted as an important fabric of the larger community. In addition, the involvement of the Southwest Community House as a partner in the development creates a unique opportunity for the provision of such services to the tenants as counseling, employment opportunities and referral, day care for the children of working parents, tutoring, organized recreational activities and the like. In summary, we believe that all the ingredients are present to assure that the Parcel 76 development will not only be a success but will become a model development.

RIISING COSTS

The second point I would like to stress relates to the problem of rising costs. When we initially applied for funding in 1974, the estimated total development cost was \$3.5 million. This year, the development of the 132 townhouses would cost approximately \$5.7 million—a 62 percent increase of \$2.2 million over the past five years. Since inflation in the building industry is currently averaging more than a percentage point per month, additional delays will mean even greater inflation in construction costs. Indeed, the longer we wait, the more difficult it will be for us to build the project for the construction dollars that HUD will approve.

In conclusion, I would like to say that at a time when the need for affordable housing is especially acute in the District of Columbia, it is especially tragic when a choice parcel of land which is ideal for housing is used instead as a parking lot because of lack of clarity in the urban renewal law. This lack of clarity has been used by a neighboring redeveloper to block our proposed project for the past five years. It is apparent to us to the construction of 132 attractive townhouses would have no effect whatsoever on the multimillion dollar L'Enfant Plaza located on the other side of the Southwest Expressway. That the developer of L'Enfant Plaza could block housing development on Parcel 76 for the indefinite future is unconscionable. Accordingly, we respectfully request the House to amend the D.C. Redevelopment Act of 1945 by adopting H.R. 3336 which would prevent neighboring redevelopers from vetoing urban renewal plan changes and would allow this important project to move ahead.

SUMMARY

PARCEL 76, PROPOSED SUBMISSION TO HUD

	Old program	New program
Number of units.....	132.....	132.....
Unit mix:		
1 bedroom.....	11 percent.....	11 percent.....
2 bedrooms.....	77 percent.....	77 percent.....
3 bedrooms.....	12 percent.....	12 percent.....
Type of program.....	Sec. 236.....	Sec. 8; tenants pay only 25 percent of their income. HUD sec. 221(d)(4) insured mortgage financing.
Estimated mortgage.....	\$3,177,200.....	\$5,159,200.....
Estimated mortgage per unit.....	\$24,070.....	\$39,085.....
Estimated construction cost.....	\$24.76 per sq ft.....	\$35.31 per sq ft.....
Estimated operating costs.....	\$918 per unit per year.....	\$1,229 per unit per year.....
Design concept.....	Townhouse.....	Townhouse, no major change contemplated. ¹
Contract rents:		
1 bedroom.....	\$255.....	\$384. ²
2 bedrooms.....	\$350.....	\$456.....
3 bedrooms.....	\$465.....	\$492.....

¹ No basic change in design concept is contemplated. However, refinements in design will be required to assure economic feasibility.

² Does not include allowance of \$50 to \$70 to pay individual utility costs.

Mr. FAUNTROY. You may proceed.

DEVELOPMENT PLANS FOR PARCEL 76

Mr. COMINGS. The proposed redeveloper is a joint venture between the Southwest Community House, the National Housing Partnership, and Harkins Associates. Effectively, what we have discussed and we have here are 132 units, proposal to be assisted under section 8 of the Housing Act, is stalled on dead center at this point in time. We have been at this now for 5 years. The existence of the litigation effectively clouds the title of this parcel so we cannot get a mortgage. We lost, some years ago, our initial subsidy reservation. We have been refused a current subsidy reservation because of the fact that there is no assurance that this project can proceed in any sort of a timeframe.

We are absolutely committed to and convinced that this will be a first-rate development, if only we can proceed. As has already been extensively talked about, the dollars—the costs are increasing continually, and there may come a point in time when the cost of development simply outruns the ability of the Federal programs to develop. Therefore, we urgently request that this legislation be approved.

Mr. FAUNTROY. Mr. Comings, I certainly thank you for your most enlightening testimony. As we indicated to Mr. Moore, we were operating on some different assumptions as to what was in fact planned for the parcel, and you have done us a very great service in clarifying those matters to us.

ECONOMIC CONCERNS

What is your opinion of the economic concerns raised during the City Council hearings in 1974 on parcel 76 and last year's congressional hearings in regard to the same issues, the value of parcel 76 land now?

Mr. COMINGS. Well, our firm has done work in urban renewal areas in probably 40 cities around the country, thousands and thousands of units. The premise of the Federal urban renewal program and the community development program is that land be sold at a price that facilitates the development of low- and moderate-income housing. So that there is a special value technique that provides that land be sold to a private developer for development of housing at, basically, a residual—land residual basis. So you are looking at a value something in the vicinity of \$500 per dwelling unit, for this purpose.

If we were to divert dollars from construction to land, we would be doing just that. The total number of dollars that we have is limited by the rental stream on this project and what you can support. Part of it, obviously, has to go to operations, and the cost of operations, including most particularly utilities, have increased dramatically in the 5 years this has been in process. It is just a question of what can be supported by the income stream.

CONSENTS REQUIRED TO MODIFY PLANS

Mr. FAUNTROY. As you know, one interpretation of the language of title 5, section 711 of the District of Columbia Code is that consent is required from all owners and lessees of property in the area who deem themselves affected by the modification. If such a policy were adopted, how would it affect, do you think, the District's urban renewal process and planning?

Mr. COMINGS. Well, I think it would very adversely affect it, and I say that from the standpoint of a developer, where we have done a number of developments in various urban renewal areas in the city. The renewal process is at least, and in most cases, at least a 10-year process. None of us—the best plans—none of us have the ability to foresee all aspects of what is going to be required over a period of the completion or subsequent modifications after projects are completed.

I think that if every last developer who has purchased or leased land in a renewal area is required to consent, you are effectively tying the hands of the city in terms of any modification.

Mr. FAUNTROY. Thank you. And, finally, Mr. Comings, your graphics there, together with your statement, are very helpful to us in explaining what is contemplated on the parcel; and for that reason, I would respectfully request that I may keep those through the markup, and that you would make them available to me at the time that we go to the full committee and to the floor of the House.

Mr. COMINGS. Certainly. I'll be happy to.

Mr. FAUNTROY. Thank you.

Mr. COMINGS. Thank you very much.

Mr. FAUNTROY. I have a communication from Mr. Manuel V. Fernandez of Channel Inn, and I would just like to recognize him at this point simply to submit it for the record.

Do you care to submit something for the record, sir?

Mr. FERNANDEZ. Mr. Chairman, I think I submitted my statement to the committee for the record, and I also have a small statement that I would like to add to it, in response to a question by Congressman Harris yesterday. And I will submit that later on in the interest of saving time.

Mr. FAUNTROY. All right. Without objection, we will include both your letter and your statement for the record at this point. Thank you.

[The documents referred to follow:]

CHANNEL INN MOTEL,
Washington, June 15, 1979.

HON. WALTER E. FAUNTROY,
Rayburn House Office Building,
Washington, D.C.

DEAR CONGRESSMAN FAUNTROY: This letter concerns a piece of legislation which will be considered in the near future by your Subcommittee on Government Affairs, Budget and Urban Affairs of the House Committee on the District of Columbia. The legislation is H.R. 3336, a bill to amend the District of Columbia Redevelopment Act.

By way of introduction, I wish to state that I am a partner in the Manglen Limited Partnership, which owns The Channel Inn, located on the waterfront in Southwest Washington. One of the purposes of H.R. 3336, I understand, is to provide authorization to proceed with Southwest Urban Renewal Plan Amendment No. 23, which will permit The Channel Inn to add fifty (50) motel rooms.

The Channel Inn presently consists of 100 rooms, a restaurant and three meeting rooms. When it was built originally, a strange combination of urban renewal height regulations provided that we could build up to three stories on one part of our land, but could only build up to two stories on the adjoining parcel. As a result, The Channel Inn as it now stands is a lopsided structure with three stories for 75 percent of the building and only two stories for the remaining 25 percent. This arrangement has always been artistically troubling.

Amendment No. 23 will permit us to add fifty (50) motel rooms by completing our entire structure to the same three-story height as now exists and by adding another small wing to the structure, again at the same three-story height. The entire structure will then have a symmetrical and uniform appearance, and will look much more attractive both from the landward side as well as the riverfront.

I am pleased to say that our proposal has been approved in all respects by the Fine Arts Commission that supervises such matters in the District of Columbia. Naturally, the addition will also be built in a conforming architectural style so it blends in with our existing building. The addition will be built in part on a vacant, black-topped parcel of land adjoining our motel and we look on that, too, as the elimination of an unattractive present use of the land.

The foregoing work will be done under the Amendment by authorizing an increase in height on part of our building, and by authorizing construction of motel facilities on the adjacent land. The Amendment also authorizes a waiver from building additional parking spaces. We look upon this step, too, as a positive one, since we have over 200 parking spaces, which presently are underutilized, and we have no desire to clutter up the area with unnecessary parking lots.

This Amendment was proposed by the District of Columbia Redevelopment Land Agency, and has been approved in full by the National Capital Planning Commission and by the District of Columbia Council.

In view of these facts, we hope your subcommittee will act favorably on the legislation. If I can furnish any additional information, I will be happy to do so.

Sincerely,

MANUEL V. FERNANDEZ, *President.*

STATEMENT OF MANUEL V. FERNANDEZ

I understand that yesterday, in response to a question by Congressman Harris, General Quesada stated that this matter before the Committee is a private bill for the Channel Inn and that our position is inconsistent. Please let me state for the record—both allegations are false.

The bill, H.R. 3336, clarifies an ambiguity in the current law and exercises Congress' reserved right to approve two plan modifications, both of which have been approved by the community, R.L.A., NCPC and D.C. City Council.

The two letters General Quesada referred to were written to pacify him in hopes that he would not challenge our fifty rooms.

In return he wrote to me on May 1, 1974 adopting his attorney's letter of April 30, 1974 both of which I would ask be inserted in the record at this point.

To digress just briefly let me state that throughout this six year ordeal to build our small addition, we have been impliedly threatened by the large and powerful L'Enfant Plaza. General Quesada wanted us to participate in opposing low-moderate income housing on Parcel 76, join his law suit and contribute to his lawyer's fees. When my letters did not satisfy his whims and we refused to join his law suit against moderate income housing, he brought us into his suit and has effectively prevented construction of our 50 rooms (about 75 percent increased plus loss of sales-Tax Revenue).

Our position is and always has been—in favor of housing on Parcel 76 and 50 motel units on D.2. General Quesada on the other hand really is not affected by either modification, but seeks only to punish those who do not do as he commands.

Again, we ask that Congress clarify 5-711 as provided in H.R. 3336, and years of litigation and allow development to begin.

Sincerely,

MANUEL V. FERNANDEZ.

L'ENFANT PLAZA Co.,
Washington, D.C., May 1, 1974.

Mr. MANUEL V. FERNANDEZ,
President, Manglen Corp.,
Channel Inn Motel,
Washington, D.C.

DEAR MR. FERNANDEZ: James Brown called Bud Howard in a contrived effort to obtain our views without confrontation. As time goes on and bureaucratic abuses continue, and, in fact, accelerate, we find it necessary to pursue our legitimate and legal rights, hoping to avoid eventual catastrophe.

It is with those thoughts in mind that I forward to you a copy of a letter that Bud Howard sent to James Brown, and I want you to be sure that it is a true reflection of our attitude.

Sincerely,

E. R. QUESADA, *President.*

Enclosure.

HOWARD, POE & BASTIAN,
April 30, 1974.

Mr. JAMES BROWN,
c/o District of Columbia Redevelopment Land Agency,
1325 "G" Street, N.W.,
Washington, D.C.

DEAR JIM: I have discussed with General Quesada, as I said I would, your recent telephone request for our views on certain proposed modifications of the Urban Renewal Plan for the Southwest Urban Renewal Area Project "C," namely, those relating to sites D-1 and D-2 on the Waterfront. His answer is very nearly what I predicted it would be.

The L'Enfant Plaza Corporations relied on the statutory requirement that, before such a modification could become effective, written consent must be obtained from all the owners or lessees of property in Southwest Urban Renewal Area "Project C" who "may be affected" thereby. The L'Enfant Plaza Corporations were so advised by the RLA at the time they decided to invest what now totals more than \$90,000,000 in developing the L'Enfant Plaza Complex, and the corporations have ever since that time fought to maintain the integrity of the Urban Renewal Plan. This has involved, in one instance, years of costly litigation, in which the Courts have recognized this principle of reliance on the Urban Renewal Plan and its statutory safeguards.

The L'Enfant Plaza Corporations are on friendly terms with the developers of the D-1 and D-2 sites and are favorably disposed toward their use of those sites, and therefore have no desire to stand in their way. Thus, I am sure you know what our answer would be if we were asked in writing to give our written consent to any reasonable modification of the plan with respect to those sites which is in keeping with the fundamental objectives of the plan. However, we believe it is in the public interest, as well as in the interest of ourselves and all other redevelopers and owners in Southwest Urban Renewal Area "Project C" to insist on full compliance by the authorities with all the statutory safeguards for modification of the Urban Renewal Plan, and thereby to maintain the integrity of the plan.

Accordingly, we must insist on being asked by the authorities (RLA or NCPC) for our written consent to the proposed plan modifications before we are willing to consider granting same. We regard the L'Enfant Plaza Corporations as being "affected" by the proposed modifications covering sites D-1 and D-2; and, if the modifications are adopted without the required written consent of the corporations, the authorities should expect us to take the necessary legal action to protect the rights of the corporations.

Sincerely yours,

DAGGETT H. HOWARD.

Mr. FAUNTROY. I now recognize the lady, very briefly, as the House will go into the 5-minute rule in 5 minutes.

Ms. MARTIN. I am Phyllis Martin, acting director of the Southwest Community House. We had no knowledge about the hearing; we heard it through the grapevine.

Mrs. Virginia Keith, as a resident of a housing project, has prepared a statement. If she cannot read the statement, I would like for it to go in the record.

Mr. FAUNTROY. Yes. Without objection, we will receive into the record at this point the statement of Mrs. Virginia Keith.

STATEMENT OF VIRGINIA KEITH, RESIDENT OF SOUTHWEST WASHINGTON

Ms. KEITH. I will submit it.

Mr. FAUNTROY. Yes, just submit it, if you will.

Ms. KEITH. I just would like to say Southwest House certainly does appreciate your receiving the statement. This has been a long hard fight for us, and we have been in it from the beginning. It was really

heartwarming to hear the remarks of Mr. Moore this morning, because it has been terrible to sit and hear people say things that were certainly untrue about parcel 76. We sincerely hope that Congress will see fit to pass this, and that this is the last mile of the way, and some of us will be able to see the housing built that we have so hard worked for and fought for, for people who could not fight for themselves.

Thank you.

[The prepared statement of Ms. Virginia Keith follows:]

TESTIMONY FOR PARCEL 76

My name is Ms. Virginia Keith. I am a former resident of Southwest Washington. I lived in public housing for 10 years prior to May, 1971. I moved away to an F.H.A. financed building because there was no place in S.W. for a person to move to who wanted to make a step up the ladder.

I am here today to recommend and endorse the building of low-moderate income housing on parcel 76. If parcel 76 is so used, than other people, like myself who have become deeply involved in the community, would not have to leave the area to find a decent place to live within their income.

Some 20 years ago, when the Government moved in to clear this section of Washington, this land area was designated one of the first urban renewal projects of the city. The people who were uprooted and forced out from their homes were told they could move back and have first priority when things were rebuilt. Well, you and I know that nothing was provided that those uprooted could afford. The few that moved into public housing were bound by their economic status to live in what had become some of the most dilapidated, unsanitary, and undesirable dwellings for human habitation. The pathetic part of this picture is that these economic shackles could not be removed except by leaving the area, because the Government has not seen fit to let someone buy land at a reasonable price to build housing for the disadvantaged.

This original plan called urban renewal and was supposed to upgrade the area and its people. It turned out to be one of the biggest mistakes of our time. In the final analysis it ended up being urban removal instead of urban renewal. The plan removed people, sacrificed families, and caused heartbreaks and frustrations. It brought to this very affluent area hostility, hatred and division.

Southwest Community House was the only agency that withstood the upheaval of what happened.

Southwest Community House is celebrating its 58th anniversary of providing service to the community. It was established to help people with problems regardless of race, color, or creed. Southwest Community House would like to be the sponsors of a low-moderate income development on parcel. 76. And, this is what we are here today to endorse. Wouldn't this be a wonderful monument to this agency—a living example of what they are all about—if they were given permission to sponsor housing for low-moderate income people on this property?

Isn't it one of the American dreams to have a decent place to live? A home, not only for the financially secure but for the poor as well. And so, Southwest Community House wants to build homes—homes for families and senior citizens—on all this land! We don't want to give up space for a 900-car parking lot garage. Why should this kind of thing be permitted next to homes for the poor? In fact, wouldn't such a large amount of parking bring more polluted air to this residential area? Surely people in affluent homes don't want this any more than we do! Since parcel 76 is the last piece of property for housing in the southwest community, wouldn't it be a humane gesture on the part of the R.L.A. to compensate for the wrong that was done and grant Southwest Community House their request?

I do hope that those in authority will seriously consider the pleas of all of us here today to petition for the disadvantaged. I hope these authorities will make every effort to honestly right the wrongs to these people, former Southwest residents who were literally forced from their homes without compassion or care from those then heading R.L.A. Now, if someone will feel compassion to make provisions for them to return to some type of decent housing they can afford. Then the Southwest area will be an example of real democracy where rich and poor, black and white, can live together in peace, harmony, and equality. And

then, those of you who have had a part in making this dream come true can truly say that you are your brothers' keeper.

And, when the words of the poet are true, and justice is finally done, we all can say :

"There is a destiny that makes us brothers,
None goes his way alone,
All that we send into the lives of others,
Comes back into our own."

(Submitted by Ms. Virginia Keith, 60 Edgewood Street, N.E. No. 624, Washington, D.C. 20017.)

Mr. FAUNTROY. Thank you so very much.

With that we will call the hearing to a close, following which we will reconvene for markup.

[The hearing on H.R. 3336 was adjourned at 11:06 a.m. on Wednesday, June 20, 1979, to reconvene for markup at 11:10 a.m.]

SUBCOMMITTEE MARKUP OF H.R. 3336

Mr. FAUNTROY. The Subcommittee on Government Affairs and Budget is convened for the purpose of marking up H.R. 3336.

I should like to insert in the record at this point a prepared statement on my part.

[The prepared statement follows:]

REMARKS OF THE HONORABLE WALTER E. FAUNTROY

For two days, we have had the opportunity to take testimony in addition to that which this Committee had available to it from its own hearings which were held last year on April 18, 1978. As you may recall, at that time, the Committee held fairly extensive hearings on an identical bill and subsequently, on June 20, 1978, ordered it reported. On June 27, 1978, the Full Committee favorably ordered the bill reported whereupon it was favorably considered and enacted by the House in September. The Senate was unable to consider the bill for the press of its business at the conclusion of the Second Session.

The matter before us is really very simple. It involves the fundamental question of whether or not an individual possessing a single freehold interest can be permitted to impart an interpretation upon law that would enable that freehold interest to arbitrarily, capriciously, and whimsically veto a modification of an urban renewal plan. In short, the issue is whether or not an elected government will be permitted to exercise its rightful power or have its powers substantially curtailed by private parties that may likely act for selfish reasons.

In the case before this Subcommittee, we have a situation where private parties are claiming to have a veto right over the development of land which they do not own and which they do not control through any expressed right, title, or reserved interest. You have heard the representatives of the homeowners in a development argue that they may be affected by this development, that they have a right to be consulted, and that they have a right to withhold their consent—in other words veto the plan change—based upon their own understanding of their interest and some kind of contractual arrangement between themselves and the RLA. You have heard other developers argue that the strength of the development of the Southwest is founded in a respect for a process that has sought to have substantial input—if not actually veto—in any plan—modifications and a strict adherence to the plan.

It is important, I believe, to separate each of these issues very carefully. Obviously, people who do not own the land can be affected, but that does not mean that they should have a veto right. The only persons who might have a right to veto a plan change would be those persons who own the land for which a change is being sought. The veto can be overridden by the use of the eminent domain powers thereby providing compensation as is required by our form of government and rightly so. Other persons, the neighbors across the street, for example, cannot be permitted to interpret the law so as to have some right of veto for they have no economic interest in this land unless it has been specifically reserved to them in a covenant or declaration. Yet, they are an affected party whose views ought to be considered for obviously one would not want to construct un-neighborly facilities.

Thus, the law requires a multiplicity of public hearings and actions by the City government and other agencies. It is not as though we would be acting to impose something upon these people without their considering their views, however worthy might be the undertaking. No other land use modification process is as involved as one which seeks to modify a land use plan in an urban renewal area. That is as it should be for we have a social contract—as one of the witnesses called it yesterday—with the people who did come and who have left this community. They have a right to be heard, and they have a right to have their promise honored.

This social contract, however, extends beyond the parties who are now living in this community. Many thousands of people who lived in Southwest were displaced with a promise that they would be able to return to this community. To this day, they have not returned or been able to return. They are persons with whom we have not even begun to fulfill our part of the bargain which was struck more than twenty-five years ago. In the meantime, the economic circumstances make it harder for them to eat of the fruits of their labors and their endeavors without direct governmental assistance and intervention. That we, in the Congress on this Committee, would be prepared to permit them to be further— if not fully—deprived of their hopes and the promise we have made to them will surely be a sin that will visit us for a long time.

The great strength of any new development, especially an urban renewal development, lies in the integrity of its plan. We seek to adhere to that plan in this bill. We seek to construct the housing that was originally contemplated to be built on that site and we seek to further the economic development of the water front so that developers will want to do more things in this city and in the Southwest area particularly. The Mall in Southwest remains an economic shambles. It will remain that way as long as development can be stymied by one or two parties. We can end that process with this bill.

Finally, I want to address my comments, also, to the commentary that you have heard that in past years RLA has sought consent of those affected. Since the law does not state who is affected, I must presume they have either sought the consent of everyone in the urban renewal area or that they have sought the consent of some on what can only be construed as an arbitrary capricious, and whimsical basis. No law can be presumed to operate in that uncertain and unclear fashion. Furthermore, I have been advised that while RLA has apparently always sought the input of those nearest some undertaking, that seeking was not always in the nature of a consent agreement. A consent agreement is a special kind of document wherein one gives up some presumed right and interest. I would add that one cannot give up that which he does not have—a right or interest in—another person's land. So, that activity, even if it took place as described, can not be anything but a sham and an absurdity.

There are a number of ways that we can approach this matter. The bill before us is a clean and straight forward method to accomplish this aim. Since the issues have been brought to us in the context of two plan changes which are sought and have been approved by all of the relevant agencies, the bill approves them as well as modifies the law.

Ordinarily, I would want the City Council and the Mayor to undertake these matters. They are in agreement with me, however, that this is a matter better and more quickly resolved by the Congress pursuant to its expressly reserved powers in Title 5, 711 of the Urban Renewal Act.

In clearly establishing the intent of the Congress, I must point out that we are acting at the request of the Court of Appeals for the District of Columbia where it was stated that Congress ought to make clear what is less than clear to some people. I encourage this Committee, therefore, to act favorably on the bill.

Mr. FAUNTROY. I would like to make several points pursuant to the hearings held today on H.R. 3336, particularly for my colleague Mr. Daniel and for my colleague Ms. Fenwick.

We have had testimony today from the Director of the Department of Housing and Community Development in the District government, and from the developer of parcel 76, which testimony has corrected some information which was provided us yesterday. We have learned, for example, that instead of 400 units of high-rise housing being planned for the parcel, there are only 132 units, townhouse, planned: 102 two-bedroom units, 15 one-bedroom units, and 15 three-bedroom units.

We have also been very interested to learn that during the entire Southwest renewal process, a total of some 4,600 households have been displaced, most of them low- and moderate-income persons, low-income persons, and of the 5,339 units that have been rebuilt, only 315, or about

5 percent, are available for low- and moderate-income people. And of the total number of units out of that 5,000 or more, only 929 are public housing units.

We have also been advised that in the history of the District's urban renewal process, with 11 separate urban renewal plans, there have been a total of some 97 amendments that have been adopted, and that the Southwest renewal plan itself, in project area C, has been amended 27 times. This, apparently, is one of the few times when the question of the process has been questioned. The process has been brought to litigation, and it does seem to revolve around the question of the character of the housing to be built.

The bill is now before us and open for amendment at any time. I would recognize the distinguished gentleman from Virginia, Mr. Daniel, to offer an amendment.

Mr. DANIEL. I am not going to offer an amendment at this time. I may offer one to the full committee later on.

Mr. FAUNTROY. Thank you so very much, Mr. Daniel.

AMENDMENT IN THE NATURE OF A SUBSTITUTE

I do want to offer a technical amendment which has been drafted in the nature of a substitute, and I will have the Clerk read.

The CLERK. Amendment by Mr. Fauntroy.

Strike out all after the enacting clause and insert in lieu thereof the following:

That (a) the first proviso of section 12 of the District of Columbia Redevelopment Act of 1945 (D.C. Code, sec. 5-711) is amended to read as follows: "*Provided*, That any such modification which affects the use or development of an area or part thereof which has been sold or leased (as such use of development is governed by the project area redevelopment plan as approved before the date of the sale or lease) shall not become effective as to such area or part without the consent in writing of the purchaser or lessee thereof:".

(b) The amendment made by this session shall be effective with respect to any approved project area redevelopment plan, regardless of the effective date or date of approval of such plan.

SEC. 2. The Congress hereby approves the following modifications to the urban renewal plan for Southwest urban renewal area project "(C)":

(1) Amendment numbered 22 (pertaining to parcel 76), as adopted by the National Capital Planning Commission on March 7, 1974, and approved by the Council of the District of Columbia on May 7, 1974.

(2) Amendment numbered 23 (pertaining to parcel D-2-B), as adopted by the National Capital Planning Commission on May 30, 1974, and approved by the Council of the District of Columbia on August 30, 1974.

Mr. FAUNTROY. I understand that this is simply a technical amendment which has been approved both by RLA and by committee counsel, and without objection, we will vote on this amendment in the nature of a substitute.

All in favor, say "aye."

[Chorus of ayes.]

Opposed?

[No response.]

The "ayes" have it. It is so ordered.

VOTE ON H.R. 3336

The vote now occurs on the bill, H.R. 3336, as amended in the nature of a substitute.

Mr. DANIEL. May I inquire about the quorum?

Mr. FAUNTROY. Yes, you may.

Mr. DANIEL. It appears that a quorum is not present.

Mr. FAUNTROY. It appears that a quorum is not present. We have been informed, however, that Mr. Harris is on his way, and if we may suspend momentarily for a reasonable length of time, we can reasonably expect to have a quorum.

I thank the gentleman for bringing that to my attention.

[Whereupon, a brief recess was taken.]

Mr. FAUNTROY. A quorum now being present, the subcommittee will now resume its business.

The business before us is a vote on H.R. 3336, as amended in the nature of a substitute.

Mr. HARRIS. I move that the bill, as amended, be reported to the full committee.

Mr. FAUNTROY. The bill has been opened for amendment at any point. You have heard the motion. All in favor, say "aye."

[Chorus of ayes.]

Opposed?

[No response.]

The "ayes" have it. It is so ordered.

Without objection, we will file a clean bill. Of course, the gentleman from Virginia reserves the right to offer an amendment at the full committee level.

Thank you, gentlemen.

With that we call the markup to a close.

[Whereupon, at 11:15 a.m., on Wednesday, June 20, 1979, the subcommittee markup of H.R. 3336 was adjourned.]

COMMITTEE MARKUP OF H.R. 4546

WEDNESDAY, OCTOBER 24, 1979

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE DISTRICT OF COLUMBIA,
Washington, D.C.

The committee met, pursuant to notice, at 12 noon, in room H-128, the Capitol, Hon. Ronald V. Dellums (chairman of the committee) presiding.

Present: Representative Dellums, Delegate Fauntroy, Representatives Mazzoli, Leland, Gray, Barnes, Marks, and Fenwick.

Also present: Edward C. Sylvester, Jr., staff director; Elizabeth D. Lunsford, general counsel; James T. Clark, legislative counsel; Robert Brauer, staff assistant; Jack Barthwell, counsel; Harry M. Singleton, minority chief counsel; and Robert Cover, assistant legislative counsel.

The CHAIRMAN. The meeting will come to order. Today we will consider four bills which we hope to take up in the House next week, probably on Wednesday, October 31. A special day for District of Columbia bills has been requested in lieu of our regular Monday District Day this week. The Speaker has agreed to seek the unanimous consent of the House on Friday, October 26.

[The committee first considered other legislation.]

The CHAIRMAN. The Chair would like to now recognize the gentleman from the District of Columbia, Mr. Fauntroy.

H.R. 4546

Mr. FAUNTROY. Thank you, Mr. Chairman. At the direction of the Subcommittee on Government Affairs and Budget, I now call up H.R. 4546 (a clean bill embodying our subcommittee amendments to H.R. 3336 on June 20, 1979, and introduced by me, and by Messrs. Reuss, Harris, and Dellums the same day), and move its adoption.

[The bill, H.R. 4546 follows.]

[H.R. 4546, 96th Congress, 1st session]

A BILL To amend the District of Columbia Redevelopment Act of 1945, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the first proviso of section 12 of the District of Columbia Redevelopment Act of 1945 (D.C. Code, sec. 5-711) is amended to read as follows: "Provided, That any such modification which affects the use or development of an area or part thereof which has been sold or leased (as such use or development is governed by the project area redevelopment plan as approved before the date of the sale or lease) shall not become effective as to such area or part without the consent in writing of the purchaser or lessee thereof:"

(b) The amendment made by this section shall be effective with respect to any approved project area redevelopment plan, regardless of the effective date or date of approval of such plan.

SEC. 2. The Congress hereby approves the following modifications to the urban renewal plan for Southwest urban renewal area project "(C)":

(1) Amendment numbered 22 (pertaining to parcel 76), as adopted by the National Capital Planning Commission on March 7, 1974, and approved by the Council of the District of Columbia on May 7, 1974.

(2) Amendment numbered 23 (pertaining to parcel D-2-B), as adopted by the National Capital Planning Commission on May 30, 1974, and approved by the Council of the District of Columbia on August 30, 1974.

The CHAIRMAN. The gentleman is recognized for 5 minutes to explain the bill.

Mr. FAUNTROY. H.R. 4546 is a bill which clarifies the ambiguity in the District of Columbia Redevelopment Act of 1945 and approves certain amendments to the urban renewal plan for southwest urban renewal project area C in the District of Columbia.

The CHAIRMAN. Is this a bill similar to the one we passed in the last Congress?

Mr. FAUNTROY. Yes, in July of last year, 1978.

Presently, the provision regarding modification of an approved project in the Redevelopment Agency plan is unclear. The ambiguity is whether consent is required from all owners and lessees of property in the area who may deem themselves affected by the modification, or whether consent is required only from the particular owner or lessee of the property whose planned use is being modified.

Specifically, the bill would amend the District of Columbia Redevelopment Act to make it clear that only the owner or lessee of the particular parcel of land whose use is being modified is required to give consent under the statute.

In addition, H.R. 4546 approves two urban renewal plan amendments in southwest Washington by authorizing (1) a low- and moderate-income housing development, and (2) a waterfront extension project.

PARCEL 76

Contrary to testimony received, Mr. Chairman, from the developer and property owners in the subject area, that parcel 76 plans include an 8- or 9-story, 200-unit, high-rise building with 400 parking spaces, the proposal for parcel 76 housing does, in fact, include the following: 132 small family townhouse units, 15 three-bedroom units, 102 two-bedroom units, 15 three-bedroom units, provisions for the elderly, and 71 parking spaces. In addition, architectural design features separate entrance walk-up units consistent with the layout of the surrounding community, private fenced-in yard, "tot" lots, landscaping with shaded seating, and community centers to provide recreational services. This information was forthcoming from witnesses from the District Government during the hearings that we held. (For summary of parcel 76, see p. 102.)

The CHAIRMAN. Will the gentleman yield for a question?

Mr. FAUNTROY. Yes.

INTENT OF THE CONGRESS

The CHAIRMAN. As I recall when you were deliberating on this particular legislation in the last Congress, the Court stated in their ruling

that one of the problems they had was that the intent of Congress was not clear, and in large measure this legislation, as I understand it, is an effort to clarify exactly what the intent of Congress is in that situation.

Mr. FAUNTROY. Counsel has just reminded me in response to your question that under footnote in the opinion itself the Court requested that the Congress clarify this matter, and this is what in fact we have done. We did it successfully in the House last year, and we, of course, didn't have the time to complete it. Now we think we have that time and we hope that the committee will favor it.

The CHAIRMAN. Are there any more questions?

Mrs. FENWICK. I have some comments, if I may, Mr. Chairman. I am opposed to this bill. The testimony that was revealed at the hearing that our colleague, Mr. Fauntroy, chaired, was that the original plans had already been submitted to the Redevelopment Agency and the opinions of the people in the area had been consulted, whereas at a later time they did not include that kind of information in the request for a change from the original plan; so they were sent back and the consent was required.

It seems to me, in other words, that there's a contract here, and that, above all, Government agencies must live up to contracts and not change the law. I think the plans have improved enormously from what was originally proposed. That highrise building would have been out of tune with the general surroundings, and the present plans, as outlined by the chairman of the subcommittee, are excellent; but the principle is the point. If they were absolute marvels, that's not the point. I think we ought not to pass this bill until the courts have decided whether or not that contract under which the people bought their land was binding or not, and I think it is important that we should be seen, and clearly be seen to obey the law and not to change it when the matter is before the courts.

The CHAIRMAN. Would the gentleman like to respond?

Mr. FAUNTROY. I would simply say that the original plans did call for low- and moderate-income housing together with the school, and we are now returning to those original plans; and the persons who originally approved the plan, did so with that understanding, that it would be the use for its land to be put. We've discussed this thoroughly now for two sessions of this Congress, and think that, particularly in light of the clarification of what is in fact to go there, we should move ahead.

The CHAIRMAN. Are there any further questions?

Mrs. FENWICK. Yes. Mr. Chairman, surely when it was approved for the school, it was not approved for housing, and I would like to point out that these plans can be changed any time. These are not binding on those who would develop it. They may return to the high-rise. I really think it would be making a mistake if we moved in this since it is a matter before the courts.

The CHAIRMAN. Are there any further questions? If not the Chair will put the question: All those in favor of the motion offered by the gentleman from the District signify by saying "aye."

[Chorus of ayes.]

The CHAIRMAN. All opposed?

Mrs. FENWICK. No.

The CHAIRMAN. The ayes have it and the motion carries.

I would like to ask, without objection, that the staff may have the opportunity to make whatever technical corrections and changes are necessary to see to it that bills are in appropriate form to reach the floor.

The Chair would like to thank all of you for coming. And I would just like to give members some miscellaneous information you may wish to share with other members of the committee who are not here.

The pension bill (S. 1037) conference has been scheduled for 1:30, Thursday, October 25, room H-137 in the Capitol. The House conferees are myself, Mr. Fauntroy, Mr. Mazzoli, Mr. McKinney and Mr. Marks; however, any interested committee member certainly is welcome.

With respect to the Housing Finance Agency (H.R. 1824) conference, that conference has not yet been scheduled with the other body, but the House conferees are myself, Mr. Fauntroy, and Mr. McKinney.

With respect to the Metro financing bill (H.R. 3951) that we passed in the House, the Senate hearings thereon have been completed and markup is expected very, very soon, I understand.

If there are no further questions, the meeting stands adjourned.

[Whereupon, at 12:15 p.m., the committee adjourned.]

SUMMARY—PARCEL 76: PROPOSED SUBMISSION TO HUD, JAN. 22, 1979

[Prepared by the National Housing Partnership]

	Old program	New program
Number of units.....	132.....	132.
Unit mix:		
1 bedroom.....	11 percent.....	11 percent.
2 bedroom.....	77 percent.....	77 percent.
3 bedroom.....	12 percent.....	12 percent.
Type of program.....	Sec. 236.....	Sec. 8; tenants pay only 25 percent of their income. HUD sec. 221(d)4 insured mortgage financing.
Estimated mortgage.....	\$3,177,200.....	\$5,159,200.
Estimated mortgage per unit.....	\$24,070.....	\$39,085.
Estimated construction cost.....	\$24.76 per square foot.....	\$35.31 per square foot.
Estimated operating costs.....	\$918 per unit per year.....	\$1,229 per unit per year.
Design concept.....	Townhouse.....	Townhouse—no major change contemplated. ¹
Contract rents:		
1 bedroom.....	\$255.....	\$384. ²
2 bedroom.....	\$350.....	\$456.
3 bedroom.....	\$465.....	\$492.

¹ No basic change in design concept is contemplated. However, refinements in design will be required to assure economic feasibility.

² Does not include allowance of \$50 to \$70 to pay individual utility costs.

EXCERPTS FROM COMMITTEE REPORT

96TH CONGRESS } 1st Session }	HOUSE OF REPRESENTATIVES }	REPORT No. 96-549 }
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AMEND DISTRICT OF COLUMBIA REDEVELOPMENT ACT OF 1945

OCTOBER 24, 1979.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. DELLUMS, from the Committee on the District of Columbia,
submitted the following

REPORT

[To accompany H.R. 4546]

The Committee on the District of Columbia, to whom was referred the bill (H.R. 4546), to amend the District of Columbia Redevelopment Act of 1945, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill, H.R. 4546, is to clarify an ambiguity in the District of Columbia Redevelopment Act of 1945, and to approve certain amendments to the urban renewal plan for Southwest Urban Renewal Project Area C in the District of Columbia. Presently, there is an ambiguity concerning the scope of the class of persons whose written consent is required to effectuate a modification of an approved project area redevelopment plan. The ambiguity is whether consent is required from all owners and lessees of property in the area who may deem themselves affected by the modification, or whether consent is required only from the particular owner or lessee of the property whose planned use is being modified. The bill would amend the District of Columbia Redevelopment Act to make it clear that it is the intent of the Congress that only the owner or lessee of the particular parcel of land whose use is being modified is required to give consent under the statute. In addition, the bill approves two urban renewal plan amendments in Southwest Washington by authorizing (1) a low- and moderate-income housing development, and (2) a waterfront inn expansion project.

BACKGROUND OF THE LEGISLATION

In 1946, the Congress authorized one of the first land clearance and redevelopment programs in the nation with the passage of the

District of Columbia Redevelopment Act (60 Stat. 791; D.C. Code, title 5, section 701). That act authorizes the Redevelopment Land Agency to acquire and clear land in blighted and substandard areas of the District of Columbia, and sell it to private developers for redevelopment in accordance with an areawide plan. The plan was required to be adopted by the National Capital Planning Commission, in the first instance, and approved by the Commissioners of the District of Columbia. When President Johnson abolished the Board of Commissioners in 1967, the function of approving plans was delegated to the appointed District of Columbia Council, and it is now performed by the elected Council, pursuant to the Home Rule Act.

As required by the Redevelopment Act, the provisions of the redevelopment plan are made binding on all redevelopers through the instruments of conveyance by which they take title or possession. Public bodies, likewise, are bound by the plan, by virtue of a provision in the act which prohibits any Federal or District official from authorizing any departure from an approved plan, except through the amendment process specified by the act, which requires the same procedural steps as the initial adoption and approval of a plan.

The Redevelopment Act specifies the procedure for approving urban renewal plan amendments in the District of Columbia. Section 711 reads, in pertinent part, as follows:

An approved project area redevelopment plan may be modified at any time or times: *Provided*, That any such modification as it may affect an area or part thereof which has been sold or leased shall not become effective *without the consent in writing of the purchaser or lessee thereof*: * * * (emphasis added)

PARCEL 76

The proposed rehabilitation of a vacant piece of land in Southwest Washington, known as parcel 76, has brought to light the latent ambiguity in this language, that is, who are the "affected" parties whose consent is required in any given case?

As projected in the original urban renewal plan for Southwest Washington, D.C., parcel 76 (which is bounded by 7th, 9th, and G Streets SW., and the Southwest Freeway) was to be a residential development, with row houses, flats, and/or two- or three-story apartments. In 1963, a modification was made to the urban renewal plan permitting parcel 76 to be used as the site for a parochial school. The proposed redeveloper for that purpose withdrew from consideration in 1970, and the question was then presented as to the most appropriate use for parcel 76. In January 1972, the Redevelopment Land Agency held a public meeting in the Southwest Urban Renewal Area to obtain the views and recommendations of the Southwest community concerning the development of parcel 76. The meeting was very well attended, and statements were presented by 45 individuals, many of whom spoke in a representative capacity. After considering all the statements presented, the Agency's Board of Directors tentatively decided to recommend that the plan be modified to permit parcel 76 to be used for low- and moderate-income housing. The Redevelopment Land Agency again solicited the views of the public on its tentative decision before mak-

ing a final recommendation. Statements were received from 36 organizations and individuals.

When the Agency's recommendation was transmitted to the National Capital Planning Commission, the Commission asked for further information concerning the site and its proposed use, and the public was again given an opportunity to present its views before the Commission's Urban Renewal and Housing Committee. The NCPC Committee recommended significant revisions to the proposal submitted by the Redevelopment Land Agency, but accepted the recommendation that the site be used for low- and moderate-income housing. The Commission followed the recommendation of its committee by adopting an appropriate amendment on January 4, 1973.

The proposed amendment then went to the D.C. Council. The Council, as required by the Redevelopment Act, held a public hearing on the proposal at which 17 organizations and individuals testified, both pro and con.

As a result of questions raised at the public hearing, the Council, on July 17, 1973, referred the proposed amendment back to NCPC for reconsideration. NCPC's Urban Renewal and Housing Committee decided to revise the proposal, and circulated it for comment to those who had submitted statements to the Commission concerning the earlier version and other persons known to be interested. The Commission, after considering the Committee's recommendation and the responses of interested persons, adopted a revised proposal on March 7, 1974.

The revised proposal was the subject of another public hearing by the D.C. Council on April 5, 1974. Six persons testified concerning the revised proposal, some representing organizations. The amendment was finally approved by the Council on May 7, 1974. On June 10, 1974, the Redevelopment Land Agency designated the Parcel 76 Limited Partnership, comprised of the National Housing Partnership, Southwest Community Organization, and Tom Harkins, a local builder, as sponsor for the project.

The present proposal for parcel 76 is designed to complement and fit into the overall neighborhood. It would be a small family development with 132 small townhouse units, 15 one-bedroom units, 102 two-bedroom units, 15 three-bedroom units, provisions for the elderly, and 71 parking spaces. Architectural designs feature separate entrance walk-up units consistent with the layout of the surrounding community, private fenced-in yards, "tot" lots, landscaping with shaded seating, and community centers to provide recreational services.

PENDING LITIGATION

Shortly after the District of Columbia Council's final approval, owners of other property in Southwest Washington filed two consolidated suits in the U.S. District Court for the District of Columbia to block the amendment. They claimed that as purchasers or lessees of property in Southwest Washington they were "affected" within the meaning of the District of Columbia Code (Title 5, section 711) by the return of parcel 76 to its originally planned use. Several months later, one of the suits was amended to challenge another urban renewal

plan modification in Southwest Washington, intended to permit the addition of 50 rooms to a motel on the Southwest waterfront.

The District court, ruling on a pretrial Government motion for summary judgment, held that while the District of Columbia Code (title 5, section 711) was ambiguous, it should be interpreted to require written consent only from the owner or lessee of the particular parcel of land whose planned use is being modified. On appeal, the U.S. Court of Appeals for the District of Columbia Circuit agreed with the district Court that the language of section 711 of the Redevelopment Act was ambiguous. The court held, however, that because there were certain issues of fact which might require a trial, the case should be remanded to the district court. The court of appeals nevertheless stated that Congress might appropriately determine to amend title 5, section 711. (*L'Enfant Plaza Properties, Inc. v. D.C. Redevelopment Land Agency*, 564 Fed. Rept. 2d 515, at page 524, note 11).

Upon remand to the U.S. district court, a full trial of the issues was held. The hearings concluded May 3, 1979 and full closing arguments were made on June 8. The case is now under advisement, and it is expected that a decision will be issued in the future.

The bill (H.R. 4546) is responsive to the court's suggestion of the need for clarifying the ambiguity in Section 711.

HEARING

The committee has given careful consideration to the problem posed by the existing ambiguity in D.C. Code title 5, section 711, because it affects the ongoing process of urban renewal not only in the Southwest Washington urban renewal area, but also in all other urban renewal areas in the District of Columbia. Urban renewal plans commonly control land use for long periods of time; the Southwest Washington project area plan, for example, extends for 40 years from November 30, 1956. It is unreasonable to expect that an urban renewal plan, once adopted, will remain unchanged throughout its duration. Flexibility in urban renewal plans is essential. Unanticipated demographic and economic changes make it difficult for the city and redevelopers to look more than a few years in the future in predicting market and redevelopment needs. There is a clear need for additional low-income housing not only in Southwest but throughout the city. Urban renewal carries with it the responsibility for rehousing those persons who have been displaced and for relieving overcrowding in other areas of the city which results for displacement. Furthermore, serious problems now exist both in terms of massive loss of rental housing and significantly increasing housing costs; under the District's present housing policy, the Mayor has pinpointed the need to move expeditiously toward developing every vacant site that is appropriate to reduce some of the housing crises that the city currently faces.

Testimony in support of the bill was received by the Subcommittee on Government Affairs and Budget from Hon. Henry S. Reuss, chairman of the House Committee on Banking, Finance, and Urban Affairs, that in adopting this legislation, Congress is expressing its view that at all times the proper interpretation of section 711 has been that only the redeveloper of the particular parcel of land dealt with in an urban renewal plan amendment is required to consent to the change. Further-

more, he urged, Congress will be making it clear that the District's urban renewal statute was not intended to prevent the construction of much-needed housing. Robert Moore, the Director of the Department of Housing and Community Development, representing the executive branch of the District of Columbia government, testified that enactment of this legislation is urgently needed since the prolonging by litigation results in enormous increases in project costs, whereby under such conditions the marketability of undeveloped sites would be greatly diminished, and redevelopment would be excessively delayed, if not precluded. Others in support of the bill were William Comings, executive vice president of the National Corporation for Housing Partnerships, who testified and presented parcel 76 architectural designs and plans for public view.

Manuel V. Fernandez president of Channel Inn submitted statements for the record. Opposing statements were received from an attorney representing a group of Southwest homeowners; a Southwest commercial developer, L'Enfant Plaza Properties; and another property owner from L'Enfant Plaza who submitted an oral statement only.

COMMITTEE ACTION

On October 24, 1979, the full committee approved the bill by voice vote.

It is the clear finding of the committee that the proper interpretation of the ambiguous provision of the Redevelopment Act of 1945 (D.C. Code, title 5, section 711) is and always has been that only the particular purchaser or lessee of the parcel whose use is directly modified through the process specified in section 711 should have the right to withhold consent from the modification. That is in keeping with traditional notions of fair treatment of individual propertyowners. As stated by Chairman Reuss concerning the correct interpretation of section 711.

Congress would not intentionally create an urban renewal plan so unworkable as to require the consent, potentially, of every property owner in an urban renewal area for every plan amendment, nor intentionally delegate to an undefined class of private parties the standardless power to veto urban renewal amendments on other people's property.

Opposition to the bill centers on the points that persons investing in urban renewal property do so because of a land use proposal stated in the urban renewal plan, and that the investors are "protected" by the District of Columbia Code section 711 from all changes in the plan to which they do not consent. The committee believes that a statutory ambiguity, found to exist by all courts which have considered the question, is not a proper or reasonable basis for all propertyowners in an urban renewal area to assume they have the right to veto all modifications for the duration of an urban renewal plan. Furthermore, the "protection" asserted is negated by the fact that all purchasers of urban renewal property make their investment with the very clear understanding, codified in the District of Columbia Code title 5, section 718(a)), that the Congress at any time can approve any change

in an urban renewal plan, regardless of the presence or absence of "consents".

The problems created by the ambiguous wording of section 711 are brought into focus most clearly when it is realized that the "amendment" herein sought for parcel 76 is in fact a return to the original housing use specified for parcel 76 in the urban renewal plan for Southwest Washington. It is the committee's view that the present confused and inequitable state of the law should not be permitted to continue, and therefore urges the adoption of the amendments to the Redevelopment Act that are provided in H.R. 4546.

SECTION-BY-SECTION ANALYSIS OF H.R. 4546

1. Section 1 of the bill removes the present ambiguous language in title 5, section 711 of the District of Columbia Code, and makes it clear that only the purchaser or lessee of the parcel whose use or development is specifically modified by an amendment to an approved urban renewal plan has the right to withhold consent from the proposed amendment. Thus, the ambiguous phrase, "as it may affect an area or part thereof," is deleted from the statute, and replaced with the language, "any modification which affects the use or development of an area or part thereof which has been sold or leased." The words "use or development" are intended to apply only to the purchaser or lessee of the property which is the direct subject of the urban renewal plan amendment. In making the clarifying change, the committee intends the record to reflect that this at all times has been the proper interpretation of section 711 of the District of Columbia Code.

2. In section 2 of the bill, Congress specifically approves the parcel 76 and Southwest waterfront amendments which have brought the statutory ambiguity to light. This will permit the District of Columbia to accomplish its objectives of providing much-needed housing on parcel 76 and permitting the long-delayed commercial expansion of the waterfront to proceed, thus contributing to the city's economic strength and vitality. This section of the bill exercises the power which Congress has reserved to adopt and approve particular urban renewal plan amendments in the District of Columbia. The congressional approval of these urban renewal plan changes is, in short, intended to have a settling effect.

CONCLUSION

Taken as a whole, therefore, this bill is designed to clarify, for the court and other interested parties, the intent of Congress in adopting section 711, and to assure that the two specified urban renewal projects, which are the subject of the amendments, be permitted to proceed forthwith.

The committee concludes that the bill, as reported, is necessary in order to remove a significant ambiguity in section 711 of the District of Columbia Code, in order to start the pace of urban renewal in Southwest Washington moving once again, and to assure that this issue does not cloud the future continued development of other urban renewal plans in the District of Columbia.

SECTION 12 OF THE DISTRICT OF COLUMBIA REDEVELOPMENT ACT
OF 1945

MODIFICATION OF REDEVELOPMENT PLANS

SEC. 12. An approved project area redevelopment plan may be modified at any time or times: *Provided*, That any such modification [as it may affect] *which affects the use or development of an area or part thereof which has been sold or leased (as such use or development is governed by the project area redevelopment plan as approved before the date of the sale or lease)* shall not become effective *as to such area or part* without consent in writing of the purchaser or lessee thereof: *Provided further*, That such modification may be effected only through adoption by the Planning Commission and subsequent submission to and approval by the District Commissioners, as hereinafter provided. Before approval, the District Commissioners shall hold a public hearing on the proposed modification after ten days' public notice. The District Commissioners may refer back to the Planning Commission any project area redevelopment plan, project boundaries, or modification submitted to it, together with their recommendation for changes in such plan, boundaries, or modification, and, if such recommended changes be adopted by the Planning Commission and be in turn approved by the District Commissioners, the plan, boundaries, or modification as thus changed shall be and become the approved plan, boundaries, or modification.

[Subsequently the following report was received from the Congressional Budget Office:]

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., October 25, 1979.

HON. RONALD V. DELLUMS,
Chairman, Committee on the District of Columbia,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 4546, a bill to amend the District of Columbia Redevelopment Act of 1945, and for other purposes, as ordered reported by the House Committee on the District of Columbia, October 24, 1979.

This legislation amends the District of Columbia Redevelopment Act of 1945 to revise the standards requiring written consent of the purchaser or lessee with regard to a modification of an approved redevelopment plan. It is expected that no additional cost to the government would be incurred as a result of enactment of this bill.

Sincerely,

ALICE M. RIVLIN,
Director.

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