

STAYING CLASSIC

Historic Reuse

BY JOHN J. COUGHLIN

Urban Rehab

BY JOHN J. COUGHLIN

High-Tech Power

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Colorado Mix



Competing for Control

Once owners become stakeholders in the redevelopment process, the better the process works.

At its best, redevelopment is a partnership bringing the public and private sectors together to address the problems of urban decay prevalent in many American cities. At its worst, the redevelopment process pits agencies and property owners against each other, making them competitors rather than partners. When the redevelopment process fails to be inclusive, with agencies and property owners working in tandem, projects derail, legal battles ensue, community goodwill suffers, and the local economy loses. However, with some planning and creativity, those consequences can be avoided.

Redevelopment works because broad authority is given to locally elected officials—who know their community best—to identify and guide all opportunities that arise. There are many tools that legislatures around the nation have given to redevelopment agencies, including the ability to acquire property by eminent domain and to relocate persons who live or work on property acquired, and the

authority to finance operations through borrowing and bond sales and to enter into agreements to develop and dispose of property within redevelopment areas.

With these powers come restrictions to ensure that redevelopment agencies do not become simply publicly financed supercompetitors in the private market. Before the tools available to redevelopment agencies can be used, certain threshold determinations must be made. The first is whether or not there is blight, which cannot be remedied solely through private enterprise and development. A second, and often interrelated requirement, is that property owners be given a reasonable opportunity to participate in the redevelopment of their property. If blight is found to exist, it implies that the owner has failed to take steps to prevent blight from developing, which in turn, reflects on the owner's ability, or willingness, to participate in redevelopment. Too often, these threshold requirements—a finding of blight and owner participation—are stumbling blocks that slow down or derail a project.

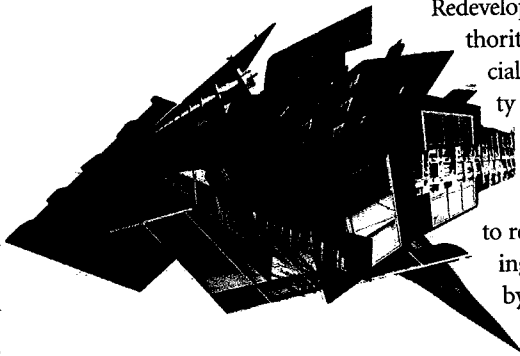
Determinations as to the existence of blight are subjective, and often contentious. There is little disagreement that dilapidated and vermin-infested apartment buildings are blighted,

justifying exercise of the power of redevelopment—and condemnation, if necessary. What is less understandable occurs when a marginal, but viable, business—perhaps a small ethnic restaurant, a shoe or watch repair store, or a small grocery store—is designated a blight in order to make way for more upscale retailers and restaurateurs. To use some real world examples, does the presence of a locally owned discount store or a community church on property sought for development by a big-box retailer like Costco establish sufficient conditions of blight to justify acquisition of the property for redevelopment? In cases like this, does redevelopment improve the community's quality of life, or is it simply driven by the tax revenue-generating potential of the proposed use, compared with the existing one.

Recently in San Jose, California, the local redevelopment agency announced the condemnation of a shopping center shortly after the owner reportedly spent \$8 million to renovate it. The property had been designated as blighted in 1991, and the owner thereafter renovated the center in an effort to avert condemnation. The agency, however, has plans to integrate the redevelopment with one across the street, which requires condemning the shopping center property and which also will exclude the current owner from the development process. The owner is fighting the condemnation in court, arguing that the lure of a greater economic return has been improperly used to justify a finding of blight, and that no public purpose is served by taking private property from an active owner and giving it to someone else to develop.

Examples such as this demonstrate that definitions of blight and how they might be applied by redevelopment agencies and judges are inexact and often involve value judgments rather than objective analysis and conclusions. There are some who would argue that this is one of the legislative functions of redevelopment agencies, and if someone did not make these judgments, revitalization of marginal neighborhoods would never occur. Regardless of any real or perceived ambiguities in the definition of blight, owner participation in redevelopment—or at least a meaningful opportunity for owner participation—not only can simplify and expedite a redevelopment project, but also often can eliminate claims that the necessary predicate of blight is not present—i.e., there is no underlying justification or need for redevelopment. After all, if the owner is engaged in the process of redevelopment, the process appears—and usually is—more defensible and less arbitrary.

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BASIL S. SHIBER
practices law in the area
of land use and
development and is a
shareholder with Miller,
Starr & Regalia, located
in Walnut Creek and
Palo Alto, California.

Most local legislation enabling redevelopment provides for owner participation. For example, California's community redevelopment law requires that:

- a redevelopment plan contain specific provisions governing owner participation in the redevelopment;
- each agency adopt rules to implement the owner participation provisions contained in the redevelopment plan;
- each agency follow the owner participation provisions of its plans and implementing regulations in the course of redevelopment;
- each plan contain alternative provisions to accomplish redevelopment if owners do not or cannot undertake the redevelopment; and
- a reasonable preference be afforded to business owners within the project area to continue operating following redevelopment.

While most redevelopment agencies do in fact routinely extend an offer to property owners to participate in redevelopment, there can be numerous structural and psychological impediments to meaningful owner participation. Often, the redevelopment agency will identify the property owner with the property as part of the problem. Such perceptions are sometimes justified, in that the property owner may have owned the property for a long period of time but lacked the vision or creativity to see its potential. Another obstacle to owner participation is that redevelopment frequently requires assembling several pieces of property for a master-planned redevelopment. Such a large-scale redevelopment project likely is beyond the ability of a single-parcel property owner to achieve, either financially or in terms of expertise.

A further obstacle to owner participation is the increasing number of "specialist" redevelopment developers, who focus on redevelopment throughout a region or a state. These developers become familiar with how redevelopment agencies operate and what redevelopment projects require, and the agencies regard them as natural allies. Specialist developers participate in the same organizations and trade groups as redevelopment agencies, formulate glitzy marketing techniques based on other redevelopment projects in which they have been involved, and develop a track record in redevelopment. They are typically sophisticated, congenial, and focused, and have ready access to capital.

By contrast, owners may lack the interest or incentive to participate in redevelopment, particularly when they have held the property for some time, have no debt servicing load, and

are generating an adequate cash flow to carry the property.

If, despite these obstacles, a redevelopment agency comes to terms with the owner regarding redevelopment of the property, the agreement is documented in an owner participation agreement (OPA), which governs the relationship between the parties. Typically, such an agreement includes provisions regarding the scope, nature, and timing of development, agency assistance, financing, and the agency review process. If the agency cannot come to

terms with the owner and reaches agreement with a third-party developer, it often will enter into a development and disposition agreement (DDA) with the developer, which includes the elements cited above, as well as an additional element governing acquisition of the property on which the development is to occur, and subsequent transfer of the property to the developer according to specified terms. Agency assistance in the development, whether to an owner-developer or a third-party developer, can include contribution of land, fi-

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Often an agency will negotiate and enter into a DDA with a third-party developer before it has actually acquired the property, or decided to acquire the property. This predictably creates problems for owners in that they are effectively frozen out of the process because of the cloud created by the DDA. Owners are unable to take steps to develop their property since lenders and potential development partners are unlikely to become involved in a proposed project if a redevelopment agency—with the power of condemnation—has entered into an agreement with someone else to develop it. Such precommitments to acquire and develop the property, before the property has been acquired from the owners, are dangerous, and leave the agency vulnerable to a challenge to its right to take the property, based on failure to allow owners to participate, and failure to publicly discuss and critically consider the merits of condemnation. Although agencies often have valid reasons for entering into a development agreement with a third-party developer before acquiring the property—such as the need to secure funding to acquire the property and the desire to avoid a vacancy period after they acquire the property—agencies that do not explore and exhaust owner participation opportunities before entering into such agreements are walking themselves into trouble.

Owner participation can occur in a variety of different ways, and agencies need to be creative in providing these opportunities. For example, if development involves a project larger than the owner's parcel, relocation to another site within the project or exchange of the owner's property with other property under the control of the agency should be considered. Allowing owners to participate under the umbrella of a master developer responsible for the entire project also is sometimes feasible and eliminates many of the problems associated with multiple ownerships. Encouraging owners to collaborate with other developers with more experience and capacity can also result in success in that such an approach keeps the owner involved, while also obtaining the benefit of the outside developer's expertise.

A redevelopment agency may consider various criteria when deciding whether and to what extent owners can participate in redevelopment of their property. These criteria include financial capability, experience, and expertise. The agency should be flexible in considering

these issues, recognizing that if one element is lacking, it can sometimes be remedied. For example, if a property owner has the financial capability and motivation but not the requisite expertise, the owner could form a partnership with a developer who has the expertise to do the work.

Owner participation involves the community in the redevelopment, which in turn results in greater cooperation and fewer legal challenges; the specialized knowledge of local expertise; benefits to the local economy by

virtue of local involvement; and the vested interest that owners have in the success of the development of their property. However, for their participation to be effective, owners must clearly understand what the agency wants, and they must have—or be given—the incentive and tools to participate. Once owners become stakeholders in the redevelopment, the redevelopment process can become simpler, quicker, and more predictable. In short, the more community-based the redevelopment process is, the better it works. ■

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