

to judicially imposed *forum non conveniens* would then be avoided, and both employers and employees would be assured of fairness in the operation of this particular phase of FELA.

CONSERVATION OF DWELLINGS: THE PREVENTION OF BLIGHT

Nearly everyone is cognizant of firetrap tenements,¹ overcrowded and unsanitary boarding houses, and single-family dilapidated dwellings with broken windows and crumbling foundations. Furthermore, most people appreciate the efforts being made to rid our communities of these malignant blotches.² Unfortunately, few persons are sufficiently aware that the process of gradual deterioration creates such conditions, and consequently a paucity of efforts are directed toward its prevention.³

This deterioration process, which is labelled blight,⁴ is induced by

1. Occasionally, these conditions are brought vividly to the attention of the citizen by the happening of a terrible disaster. This is exemplified by the recent Chicago tenement fire which took 18 lives. See Chicago Daily Tribune, Sept. 12, 1953, § 1, p. 1, col. 9.

2. See footnote 20 and accompanying text *infra*.

3. Any program which is aimed entirely at the elimination of slums through an attack upon the established slum area will only serve to force the slum into another area.

"Like a migratory flock of black birds resting and feeding temporarily, so groups of immigrants as well as individual families and isolated individuals stop in this transitional area on their way up or down the social scale. Each of these waves of people leaves a residue of poverty-stricken, socially unadjusted, maladjusted defectives and delinquents which gradually accumulates into a slum population." WALKER, *URBAN BLIGHT AND SLUMS* 31 (1938).

4. Many persons have attempted to define blight. See WALKER, *op. cit. supra* note 3. In her discussion of blight, Dr. Walker cites the following definitions by other writers: "A blighted residential area is one on the down grade, which has not reached the slum stage." Wood, *Slums and Blighted Areas in the United States*, 1935 HOUSING DIV. BULL. No. 1 at 3. "A blighted area is an area that economically is not self-supporting." *Analysis of a Slum Area in Cleveland 2*, prepared for Cleveland Housing Authority. Blight exists in ". . . any area in which economic development has been considerably retarded, as compared with the development in the larger area, of which the area under consideration is a part." Knight, *Blighted Areas and Their Effect Upon Land Utilization*, ANNALS OF THE AMERICAN ACADEMY 134 (1930). Dr. Walker comes to the following conclusion: "At any rate the term 'blight' is used in an economic sense, while the designation 'slum' is essentially of social significance. . . . A blighted area is generally unprofitable, but the opposite may be true of certain slums. . . . For the purposes of this study we shall define blighted areas as those sections of a community where, as a result of social, economic, or other conditions, there is a marked discrepancy between the value placed upon the property by the owner and its value for any uses to which it can be put, appropriate to public welfare, under existing circumstances. This discrepancy prevents or handicaps the improvement of the area. Old buildings are neglected and new ones are not erected and the

interaction of structural, physical, political, economic, and social factors.⁵ Structural factors refer to improperly constructed housing.⁶ Physical

whole section becomes stale and unprofitable. In other words, blight is a condition where it is not profitable to make or maintain improvements." WALKER, *op. cit. supra* note 3, at 6.

A similar conclusion is reached by Dr. Ford in 1 FORD, SLUMS AND HOUSING 8 and 11 (1936), where after a similar investigation of prior definitions, he states: "The blighted area is not necessarily residential. The slum is, however, ordinarily a blighted area primarily residential in character." *Id.* at 8.

"We may, therefore, better define a blighted district as any area in which the large majority of buildings, whether commercial, industrial, or residential, are old, and in which fundamental repairs are no longer being made. . . . Any area of deteriorated housing in which there is poor upkeep of houses and premises is a blighted district and a potential slum." *Id.* at 11.

5. 1 FORD, SLUMS AND HOUSING 443-444 (1936). "Although no single cause of blight can be specified, and no group of clear-cut causes of measurable influence and intensity, there is value in outlining the imponderable, precipitating, and causative factors, since they unquestionably suggest possible points of attack upon the contemporary problem and devices for prevention. For convenience these may be listed under the following headings: physical factors, population factors, economic factors, architectural and engineering factors, political factors, and social factors." See also PRESIDENT'S CONFERENCE ON HOME BUILDING AND OWNERSHIP, *Slums, Large Scale Housing and Decentralization* 42-44 (1932), where, after first stating: "There is no one cause of a blighted area. A cause obviously of primary importance in one community may be entirely absent in another. The cause may be a positive degenerative factor or it may be the lack of a necessary vitalizing factor," the following attempt is made to outline such causes.

1. "Primary Causes.

(a) *Uneconomic use of land.* . . .

(b) *Obsolete buildings that cannot be modernized.* . . . [because]: 1. They fill the lot, so there is no space for alterations; 2. Their size and plan make them unadaptable to modern requirements.

(c) *Invasion of incompatible uses.* . . . : 1. Social or racial groups antipathetic to earlier inhabitants; 2. Degenerate uses of dwellings, as boarding houses; or several families using accommodations designed for one family; 3. Deterioration of border lands producing bad conditions that progressively work inward; 4. Sporadic business or industry; 5. Development of heavy traffic; 6. Development of conditions outside the district that adversely affect it, as production of smoke or smell in the direction of prevailing winds.

(d) *Competition by other districts* . . . causing desertion of the old.

2. "Secondary Causes.

(e) *Obsolete buildings.* . . . [which can be modernized.]

(f) *Natural handicaps.* These may be swampy soil . . . steep hillsides. . . .

(g) *High costs.* . . . : 1. Taxes (assessments); 2. Mortgages; 3. Asking price; 4. Wages. . . .

(h) *Rising standard of living.* . . . : 1. Greater spaciousness; 2. More light and air . . . ; 3. 'Modern' buildings, as regards arrangement and equipment as well as architectural design. . . .

(i) *Fashion, advertising, a deliberately created attitude of mind.* The effects of this have been evident in the 'suburban trend'. . . .

3. "Sequels. These are [such] things . . . as absentee landlordism, neglect of properties, delapidation."

6. For example, such factors blighted the areas of New York in which the so-called "dumbbell" tenements were erected to house the influx of industrial workers. Although the architect who designed those tenements won a prize for the submission

factors pertain to land configuration and proximity to undesirable land uses.⁷ Political factors are the law of landlord and tenant, real estate law, real estate taxes, rigid city ordinances or laxity in the enforcement of essential ordinances and laws.⁸ Economic factors include purchase and rental prices of land, repair and maintenance costs, average wage or income of the inhabitants of the area, and the general economic stability of the community.⁹ Social factors concern the living habits, moral standards, psychological problems, and educational levels of inhabitants.¹⁰

Only by example can the complex nature of the process of blight be seen in its true perspective. Even in its simplest form, that of a single residence, the blighting process includes each of the factors in varying degrees at different times.¹¹ The massive two story brick house built late in the last century in most of the cities and towns of this country serves as a good example.¹²

of the plans for those easily constructed, space saving tenements, they now comprise some of the worst slums in New York. The architect took many things into consideration, but he overlooked the need for light, air, water closets and many other essentials of healthful living. See 2 FORD, SLUMS AND HOUSING (1936).

7. Consider the southern Indiana town into which an influx of workers came to work in a furniture plant. Many of the workers built small homes on a hill overlooking the plant. Unfortunately, the hill was solid rock covered with a thin layer of soil, making the installation of sewers and water mains prohibitively expensive.

8. In most of the bigger cities large areas of the worst housing are owned by groups of investors whose only concern with the property is their share of the profit derived from it. The complicated law of mortgage and investment financing has made possible the creation of a superstructure of ownership of property so complex that the law of landlord and tenant is useless in imposing responsibilities upon such owners in the interests of the community.

9. The "ghost towns" of the West fell victim to the economic factors of blight. Built in the boom of the discovery of gold they died, in spite of other factors which were not necessarily unfavorable, when the gold ran out. The less spectacular aspect of the economic element is represented by the individual who believes, often justifiably, that he cannot invest enough money to maintain his property in good repair. Doctor bills are given preference over a coat of paint.

10. Chinatowns, Harlems, and "little Bohemias" are situations of common knowledge. Consider also the impact of the influx of industrial workers into a neighborhood formerly predominantly composed of college professors and personnel. Unfortunately, any social disparity, even if it is purely educational, will often produce an economic reaction.

11. WALKER, URBAN BLIGHT AND SLUMS (1938). Dr. Walker quotes from page eight of PERRY, THE REBUILDING OF BLIGHTED AREAS, where an example similar to that given in the text of this note is stated. *Id.* at 24. Dr. Walker also quotes G. B. Whitehall's description of the blighting of a wealthy residential district in Milwaukee, Wisconsin. *Id.* at 25. See PRESIDENT'S CONFERENCE, *op. cit. supra* note 5, at 2, where the process of blight is described.

12. Indianapolis, Indiana, has a problem which became acute even earlier. See The Indianapolis Star, Aug. 17, 1953, § 1, p. 1, col. 8, where it is said: "with the life expectancy of a frame house pegged at 40 years, Indianapolis is in for some real trouble in the next decade since 59 percent of its dwelling units were constructed prior to 1919." The life expectancy of houses seems to fall under both the structural and social headings as a causative factor of blight. If it is too long the house tends

The rooms in the house are oversize with very high ceilings and correspondingly high window frames making uniform heating in the winter an impossibility. Almost every room once had a fireplace, and the kitchen was built to accomodate a huge wood burning cooking range. There is no basement, only a dark cellar suitable for storing canned goods and potatoes but wholly inadequate for the installation of a furnace. Indoor plumbing was confined to a pump in the kitchen, and no provision was made for such unheard of things as running water or electricity.¹³

Unfortunately, the children of the original owner moved out, leaving behind them their heritage which fell upon the community, there being no way to deed it to the new owner. Perhaps the new owner injected a heritage of his own into the house and kept it alive with constant maintenance and improvement. Nevertheless owners died or moved away, while the house remained a part of the community. In the end the community is the sole owner of the many heritages left attached to the house by the passing owners.¹⁴

One owner installed an indoor bathroom. Another walled up the fireplaces replacing them with coal stoves. Still another installed electric fixtures, adequate at the time. Walls were shifted and additions built and torn down to suit the needs and tastes of the passing parade of owners. Some of the improvements made by previous owners proved to be detriments to later owners, and as the years passed the quality of the "improvements" decreased perceptibly.¹⁵

Meanwhile the community did not remain stationary. A grocery store moved into a building on the corner down the street. The street was widened to allow for the increased traffic brought on by the advent of the automobile. A new factory in town further increased traffic past the house and produced a sizeable demand for low-cost living accommodations in the immediate area.¹⁶

to go "out of date," if too short it compounds the housing shortage. Perhaps with the advent of the "prefabricated" house, homes, like automobiles and house trailers, will be traded in periodically on a new model.

13. All the factors presented in this paragraph are readily classified under the "structural" heading. One of the biggest weaknesses in the use of planning and building laws as opponents of blight is the impossibility of foreseeing all of the technological developments that will take place during the life expectancy of a house.

14. Pictured here are traces of social, economic and political factors. Social factors being represented by the desire of the older generation to preserve their place in society for their children and in the younger generation's desire to make their own way. Economic factors are produced by the comparative rapidity with which land changes hands due to this pressure to move about. Political factors are introduced by attempts to protect such land transactions by recording statutes and, in some states, the Torrens system.

15. Perhaps the factors represented here could best be characterized as aggravations of original structural, social and economic factors.

16. Manifestly, the physical characteristics of the city have changed. The house

Today that old brick home is a rooming house which needs paint and another bathroom to handle its increased number of tenants. The turnover in tenants is rapid during the winter when most of the rooms are cold and drafty. The present owner, who does not even live in town, is primarily concerned with maximum profit and, therefore, likes to keep maintenance costs at a minimum intending to sell if these expenses rise substantially. Admittedly, the house cannot properly be labelled a slum building, but it is far removed from its original stature as a "nice" family home. The future holds slight promise of improvement.¹⁷

If this one house were the only instance of blight in the community it would be unfortunate enough. However, the heritage of the entire neighborhood lies moldering where it was gradually abandoned as the endless parade of owners and inhabitants rested there for a while and passed on in search of more desirable surroundings. The neighborhood provokes the same nostalgic sense of faded glory, to a lesser degree, as the dilapidated mansions of the Old South.

From what has been said thus far it would seem that blight is actually the simple and inevitable process of gradual obsolence. Realistically, it is not simple, and fortunately, it need not be inevitable. Indeed, it must not be allowed to be inevitable for as a house is subject to blight so is a neighborhood, a town, a city, a nation. If time alone brings blight then all Manhattan Island must someday fall victim to blight, and the Empire State Building must eventually become the most tremendous slum building known to man. The causative factors of blight must be recognized as manifestations of dynamic socio-economic change.

While time alone is not one of the causes of blight, a definite chronology in blight's operation is discernible. That chronology may be divided into stages by the factors which are found to predominate at each stage, although all factors are operative to a degree in every stage. All blighted areas must have been built, become undesirable and allowed to deteriorate until they became slums. Thus, the first stage is the construction period in which the structural and physical factors predominate; in stage two the property becomes less desirable due primarily to economic factors; stage three is the era in which deterioration of the property occurs mainly because of political factors; and the last stage

was built too close to business and industrial sites to maintain its status as a one family residence. Future problems of this sort can be alleviated by planning laws, but again there is difficulty with reasonable foreseeability especially over such an extended period as is represented by the life span of a house.

17. Now all of the factors of blight are present in a confusing welter. There are probably people who would classify it as a slum building already, but minor repairs such as painting and careful selection of tenants could probably avoid that classification.

is the final conversion of the property into a slum area in which the social factors predominate, except insofar as deterioration has produced structural factors.¹⁸

Areas now in the construction stage are not presently blighted. There is a possibility of blight, which is properly the concern of the planning laws and building codes. Thus, the problems evolving from control of stage one will not be considered here, except as they influence the later stages.¹⁹

When blight reaches its last or slum stage, it has traveled its entire course. Hence, the slum problem, as such, will be left to the efforts of the redevelopment and social service programs already operating with increasing effectiveness.²⁰

Having eliminated the inception and the ultimate end of blight, the operative stages remain for consideration. In stage three trash has accumulated, basic repairs are no longer being made, and broken windows and leaking roofs mar the area. This stage, which begins with the first readily apprehensible threat to the public health or safety, extends to housing conditions constituting the absolute slum.

Combating the most advanced part of stage three and overlapping into the slum stage is the theory and practice of rehabilitation. Rehabilitation, which is the rejuvenation of deteriorated buildings is usually carried on by private enterprise. Businessmen obtain control of a tenement building or a group of slum or semi-slum dwellings which are still basically sound, repair and refurbish them to a respectable state and relet them, generally at increased rents.²¹ Often rehabilitation of both the

18. This chronology is not an inevitability. The duration of the various stages is indefinite. Some areas may remain in one of the stages for years with no apparent change while others may pass through one of the stages too quickly to be identified. Further, the stages shade into each other so imperceptibly that exact demarkation is impossible.

19. See Note, 28 IND. L.J. 544 (1953) in which an analysis of subdivision control legislation is made.

20. Redevelopment is the name given the program in which a governmental agency, usually municipal, takes the ownership of slum property through eminent domain proceedings, demolishes the existing slum buildings and either converts the property to some public use such as a park or relets or resells the property to private enterprise. This is a drastic step which is justified only in the case of an absolute slum. See AMERICAN SOCIETY OF PLANNING OFFICIALS, PLANNING (1952).

The work which such organizations as the YMCA-YWCA, and Salvation Army do in the absolute slum area is comprehensive, well directed, and effective. See ARTIS, A COMPARISON OF THE SIMILAR PROGRAMS OF FLANNER HOUSE, THE SENATE AVENUE BRANCH YMCA AND THE PHYLLIS WHEATLEY YWCA OF INDIANAPOLIS, INDIANA (unpublished thesis in the Indiana University Library, 1941).

21. Rehabilitation programs are strongly backed by the National Association or Real Estate Boards as a substitute for redevelopment. The controversy between redevelopment and rehabilitation programs is apparently one based in the eternal struggle between government and private enterprise. See Lund, *Last Chance to Save*

buildings and their tenants is undertaken with remarkable results.²² However attractive rehabilitation may appear, it necessitates relatively drastic measures which cannot prevent, but only repair the harm already suffered. Hence, rejuvenation of buildings by each owner through maintenance and repair as early in stage three as possible is desirable. Those owners who are willing to allow their buildings to degenerate to the point where rehabilitation is necessary must be reached; the problems dealt with here are the methods of reaching those owners.

A possibility which immediately suggests itself is that the common law of public and private nuisance with its powers to compel abatement could be readily utilized to combat blight in this stage. This procedure seems so desirable that some states and municipalities have attempted to expand its operation by declaring what shall constitute a nuisance.²³ Unfortunately, the legal machinery for the prosecution of nuisances is not a suitable tool for combating blight. The court procedure is slow and cumbersome in addition to being expensive. There is difficulty in determining the proper parties. Moreover, as a neighborhood becomes progressively more blighted the probability of a private nuisance suit being instigated becomes increasingly less likely. However, the basic

Our Cities, This Week Magazine, April 26, 1953, p. 10. The better view is that expressed by Reul Hemdahl, City Director of Urban Redevelopment, Louisville, Kentucky. "A basic principle of redevelopment is that the redevelopment project must include rehabilitation to control blight in the neighborhood around the redevelopment area. The two go together. Redevelopment is merely surgery to get rid of the most serious blighted areas that can't be cured by rehabilitation." The Louisville Courier-Journal, Feb. 15, 1953, § 3, p. 15, col. 5.

22. Octavia Hill, a remarkable English woman of the last century, originated the idea of rehabilitating both the buildings and their tenants. She formed associations which acquired the ownership or control of slum or semi-slum buildings and through a system social workers repaired and improved the buildings at the same time teaching and encouraging the tenants to improve their own living habits. Her plan was successful, not only in improving living conditions, but also in showing a profit which she reinvested in more housing in need of improvement. See BELL, OCTAVIA HILL (1936). Octavia Hill associations spread from England to the United States where they are still in active operation with continuing success. See AMERICAN SOCIETY OF PLANNING OFFICIALS, PLANNING 187 (1952).

23. "The board of town trustees shall have the following powers:

"Fourth. To declare what shall constitute a nuisance, and to prevent, abate and remove the same, and take other measures for the public health as the board shall deem necessary." IND. ANN. STAT. § 48-301 (Burns Repl. 1950). "The common council of every city shall have the power to enact ordinances for the following purposes:

"Seventh. To declare what shall constitute a nuisance, to prevent the same, require its abatement, authorize the removal of the same by the proper officers, and provide for the punishment of the person or persons causing or suffering the same, and to assess the expenses of its removal against such person or persons. . . ." IND. ANN. STAT. § 48-1407 (Burns Repl. 1950). For ordinances which have taken advantage of this state law, see Municipal Code of the City of South Bend, Indiana, c. 13, Art. 1, § 4 (1949); Municipal Code of City of Bloomington, Indiana, §§ 3-109—3-111 (1941); Municipal Code of the City of Gary, Indiana, c. 12, §§ 7-9 (1949).

difficulty with the use of the nuisance machinery lies in the fact that the courts have clung tenaciously to the common law requirements even for public nuisance. There must be actual harm or at least the threat of immediate actual harm before nuisance will lie.²⁴ Thus the nuisance concept allows blight to operate unrestricted until some actual harm results or is proximately threatened; but then, it is difficult to say who has been harmed for one slum building is hardly a nuisance to a neighboring slum building.

The nuisance approach, which was early recognized as inadequate,²⁵ was followed by laws and ordinances couched in terms of the protection of the public health and safety.²⁶ Such ordinances, based on the "police power" and having as sanctions only fine and imprisonment²⁷ as con-

24. The Indiana courts have been unwilling to uphold nuisance cases on purely aesthetic considerations. They demand that the conditions cause a "physical discomfort." The interpretation of "physically uncomfortable" conditions is rather broad, but the decisions, at best, represent an uncertain background on which to base a case. See *Albright v. Crim*, 97 Ind. App. 388, 185 N.E. 304 (1933); *Miller v. Town of Syracuse*, 168 Ind. 230, 80 N.E. 411 (1907); *City of Indianapolis v. Indianapolis Union Ry. Co.*, 160 Ind. 45, 66 N.E. 163 (1903); *City of Evansville v. Miller*, 146 Ind. 613, 45 N.E. 1054 (1897).

The prevailing judicial feeling is also well represented by the language of the court in *Shamburger v. Scheurrer*, 198 S.W. 1069 (Tex. 1917): "It might be a source of irritation and extreme annoyance to the owner of a beautiful mansion to have his neighbor build a lowly log cabin on an adjacent lot, and the value of the rich man's palace might be depreciated thereby and the pleasure in its use as a home be largely circumscribed, yet equity will not, by reason of such facts, restrain the building of the humble cottage. . . ." *Id.* at 1072. In another Texas case the court, after finding that "[i]n 20 R.C.L. § 45, p. 429, it is said . . . mere unsightliness of a structure will not give it the character of a nuisance," concluded that even by increasing the fire hazard to its neighbors a building could not become a nuisance. *Worm v. Wood*, 223 S.W. 1016, 1018-19 (Tex. 1920). *But cf.* *Birchard v. Lansing Board of Health*, 204 Mich. 284, 169 N.W. 901 (1918).

25. A ". . . portion of the martial law as established for the Colony of Jamestown, in Virginia by Sir Thomas Gates, Lieutenant-General, on May 24, 1610:

'Section 25. Every man shall have an especial and due care, to keepe his . . . house sweete and cleane, as also so much of the streete, as lieth before his door as he will answer the contrarie at a martiall court.'" WILLIAMS, LAW ENFORCEMENT AND THE "BALTIMORE PLAN" 19 (1950).

26. Revised Ordinances of the City of Ligonier, Indiana, General Ordinance No. 76 (1945); Municipal Code of the City of Bloomington, Indiana, Tit. 3 (1941); Municipal Code of the City of Gary, Indiana, c. 12 (1949); Municipal Code of the City of Indianapolis, Indiana, §§ 416-420 (1925); Town Ordinances, Civil Town of Seeleyville, Vigo County, Indiana, Ordinance 3-3 (1939).

27. There have been attempts to secure for the "police power" some of the advantages of the mandatory power of equity by allowing a public official to correct a violation of ordinances and charge the cost of such correction against the person in violation. See IND. ANN. STAT § 48-1407 (Burns Repl. 1951). "General Powers of Council—Fourteenth: To compel the occupants of any premise, building or outhouse, when the same have become filthy or unwholesome, to abate or cleanse the same, and to authorize such cleansing to be done by the proper public official, and to assess the expenses thereof against, and collect such expense from, the occupant or owner, or

trusted with the injunctive powers of the courts in a nuisance case, have been only slightly more effective than the nuisance machinery. The ineffectiveness of these ordinances stems partially from the fact that, as with nuisance, blight is allowed to operate undeterred until some indefinite harm results.²⁸ The enactment of many different ordinances, health, sanitation, building, and fire codes, each with its own department for enforcement, further contributes to inefficiency. This division of the police power results in a dilution of that power to ineffectiveness.²⁹ Moreover, the public health officer, a minor public official, may see violations of the law every day which he does not think of prosecuting. With few, if any, numbers of the public interested in his efforts, a lesser public official will hesitate to fine or imprison the owners of considerable amounts of property (who may also have substantial political influence) for violations of the health code. Blight cannot be conquered through a piece-meal effort. It necessitates an attack which utilizes the concerted forces of the police power.

There have been two recent attempts to surmount these difficulties. One is the "minimum standards" approach in which existing codes and ordinances are replaced or supplemented by an ordinance covering every aspect of housing, in an effort to concentrate the police power and clarify the harms which it attempts to eliminate. The other is the "Baltimore Plan" in which maximum effort is made to coordinate the various departments and ordinances and secure strict enforcement of the law.

The "minimum standards" ordinance provides that "no person shall occupy as owner-occupant or let to another for occupancy any dwelling or dwelling unit" that does not comply with established standards.³⁰ Those specifications include the number of water closets, sinks, bathtubs

to impose a lien on such property for such expense and place the same on the tax duplicate for collection or to collect the same by foreclosure of said lien."

At first glance this sort of statute would seem to be very useful in combating blight. Unfortunately it has become hopelessly confused with the nuisance problems by both the courts and the city officials. See *First Nat'l Bank of Mt. Vernon v. Soells*, 129 Ind. 201, 28 N. E. 434 (1891) and *Municipal Code of the City of South Bend* §§ 4-5 (1949). It seems that the power of the city to regulate in this area is bound to conceptions which arose in the 17th century common law.

28. Dr. Henry C. Nester, Indianapolis City Health Officer, in discussing the inadequacies of such ordinance, stated, they ". . . are so general in their terms that a prosecutor cannot make a case from them." *The Indianapolis Star*, April 5, 1953, § 2, p. 1, col. 7.

29. After a recent fire in Chicago tenements, the *Chicago Tribune* reported that "Coroner McCarron told Mayor Kennelly yesterday the city building department has been negligent in its inspections. . . . Negligence of the building department, McCarron told reporters . . . has been shown in investigations of three recent Chicago fires." *The Chicago Tribune*, Sept. 12, 1953, § 1, p. 1, col. 10.

30. General Ordinance No. 36. Passed by the Common Council of the City of Indianapolis, Indiana, in August, 1953.

or showers per dwelling unit. Minimum floor space per inhabitant is prescribed. Additionally, minimum total window area, minimum adequate ventilation and minimum heating requirements are listed in terms of percentages.³¹

Summarily, the minimum standards type of ordinance attempts to establish a level of blight below which no housing may fall, and demands that all nonconforming dwellings be raised to prescribed standards. It attempts to state that level in firm and rigid terms that are readily determinable and conducive to living conditions considerably superior to a slum environment.³² At the same time it attempts to impose responsibilities upon both owners and inhabitants,³³ while establishing legal processes to assure acceptance of those responsibilities.³⁴ By directing one ordinance to all aspects of housing it is hoped that the interest and support of both the municipal authorities and the public can be attained.

Perhaps a city can elevate its dwelling standards by specifying the quality of its lowest acceptable level of housing through legislative fiat, but an ordinance, without more, cannot accomplish that result. It is merely a tool the success of which depends upon skillful use by

31. *Id.* at §§ 5-8.

32. A comparison of the "minimum standards" ordinance's requirements for ventilation with those of the old city ordinance reveals such rigidity and ease of determination.

Old city ordinance:

"It shall be unlawful for any owner, lessee or tenant of any residence or dwelling . . . to permit the rooms thereof to become badly ventilated. . . ." Municipal Code of the City of Indianapolis, Indiana, § 418 (1925).

Minimum Standards:

"6.2. Every habitable room shall have at least one window or skylight which can easily be opened, or such other device as will adequately ventilate the room. The total of openable window area in every habitable room shall be equal to at least forty-five percent (45%) of the minimum window area size or minimum sky-light-type window size, as required in Subsection 6.1 of Section 6 of this ordinance, except where there is supplied some other device affording adequate ventilation and approved by the Health Officer or Building Commissioner.

"6.3. Every bathroom and water closet compartment shall comply with the light and ventilation requirements for habitable rooms contained in Subsections 6.1 and 6.2 of Section 6, except that no window or skylight shall be required in adequately ventilated bathrooms and water closet compartments equipped with a ventilation system which is kept in continuous operation and approved by the Health Officer or Building Commissioner." General Ordinance No. 36, *op. cit. supra* note 30, § 6, subsection 6.2 and 6.3. (from an unofficial copy)

33. *Id.* at § 9.

34. The machinery consists of a system whereby the Health Officer or Building Commissioner may issue a notice of violation to the person responsible therefor stating a course of remedial action that can be taken to effect compliance. Such person in violation of the ordinance may then petition the City Health Board for a hearing within ten days after notice and an adverse ruling may be appealed to any court of competent jurisdiction. *Id.* at § 3.

enlightened public officials.³⁵ It should be remembered that it is in this third stage of blight that political factors predominate. City ordinances can clearly be classified as political factors. As the economic desirability of property decreases there is a tendency to allow it to deteriorate. Hence, if a strong ordinance, such as the minimum standards ordinance, is in force, there is a possibility that the property will become still more undesirable because the ordinance imposes the expensive duty to maintain. Declaring the property unfit for human habitation will certainly complete the blighting of that property if no one chooses to invest the money necessary to meet the minimum standards.³⁶ Indeed, rigidity in effort accentuates an old problem in administration of past ordinances which arises when the owner threatens to tear down the dwelling rather than comply. The city is then forced to make a difficult choice, which often results in a slum.³⁷ Flexibility in standards and enforcement procedures rather than rigid specifications would relieve this situation.

The "Baltimore Plan" is an excellent example of the results obtainable through use of a flexible standard. It originated with a Baltimore

35. In the seventh of a series of eight articles dealing with slums and substandard areas in Indianapolis the following remarks were reported:

"General Ordinance 36, the measure passed last week by [the] City Council to check the city's rapid decline into a vast, sprawling slum, will not be used as an ax to chop down houses.

"Administrators of the ordinance, Dr. Henry G. Nester, City Health Director, and Building Commissioner Charles E. Bacon, intended to use the ordinance to force property owners and tenants to repair and maintain property that is now on the skids. Owners and tenants are subject to \$10 to \$300 in fines.

"Dr. Nester and Bacon each view it as a tool to be used only when the public fails voluntarily to do its part in cleaning up Indianapolis. . . .

"While the stress will be placed on rehabilitating houses, the ordinance will be used when a crackdown is necessary, according to Bacon and Dr. Nester. Previously, the laws were weak, permitting owners of slum properties to ignore orders to wreck or repair their buildings." *The Indianapolis Star*, Aug. 24, 1953, § 1, p. 1, col. 1.

In Louisville, Kentucky, the sanitation director of the city-county health board stated: "Our problem has been, not that our housing code is inadequate, but that there hasn't been enough interest either public or private, to allow us to enforce our laws." A. P. Bell as quoted in *Louisville Courier-Journal*, April 26, 1953, Mag. Sec., p. 10.

36. In an article describing the conflict of opinion prior to the passage of General Ordinance 36 by the Indianapolis City Council the following arguments foreshadow an unwillingness by real estate men to invest sufficiently in such property. "Opponents to the measure say it grants too much power to the health officer and building commissioner and sets overly-stringent requirements.

"We're entirely in sympathy with the elimination of slums and cleaning up the city, but we think the ordinance is too severe," said Henry A. Werking of the American Home Owners, Inc.

"We contend the City has no legal right to demand alterations in dwelling units previously remodeled and that the ordinance would be unconstitutional, except as it refers to future building or remodeling." *The Indianapolis Star*, April 5, 1953, § 2, p. 1, col. 7.

37. See Early, *The Day in Indiana*, *The Indianapolis Star*, April 15, 1953, § 1, p. 1, col. 1. Mr. Early states: "Indianapolis and other larger cities in the state have

public official who aroused the interest and cooperation of other municipal officers, agencies and ultimately, the entire city.³⁸ This plan utilizes the housing law presently in existence in Baltimore and, through a system of cooperation of all municipal agencies, has enlisted the public

the means to prevent the development of slums. In most instances there can be no slum property if the cities enforce their health, sanitation and safety laws.

"Effectiveness of such strict law enforcement has been recognized by the Indianapolis health commissioner. But there have been reasons to prevent action.

"Many houses could have been condemned or drastic orders made to correct conditions. But owners of these properties could defy the health commissioners. Rather than spend money on needed improvements they could order the houses torn down at a time of a severe housing shortage. Even a shack is better than no house at all." See also a timely series of eight articles in *The Indianapolis Star* appearing on August 17, 19, 20, 21, 22, 23, 24, 25, 1953, concerning slums and inferior housing.

The sixth of the series prints the names of owners of property condemned to be torn down who are still collecting rent from tenants, ignoring condemnation and clean-up orders from the City Health Officials. The article states "when asked why residents have not been evicted from many of these dangerous structures, city officials sadly admit that the Principal [sic] reason is because 'they haven't any place to move.'" *The Indianapolis Star*, Aug. 23, 1953, § 1, p. 17, col. 4.

The following article of the series cites the case of one Noble H. Wible, owner of a seriously overcrowded tenement who consistently ignored warnings from the Building Commissioner and was finally cited for violating the building code on eight counts. After a delay of eight months the Municipal Court fined him \$75 and costs. It is not stated whether anything was done about the housing conditions. *The Indianapolis Star*, Aug. 24, 1953, § 1, p. 1, col. 1.

Perhaps the most depressing evidence of the inefficaciousness of present housing law and the lack of interest in public officials is the case of the rotten frame buildings at 1801-29 Broadview Terrace, Indianapolis, which were condemned by the Building Commissioner and subsequently given to the Commissioners of Marion County by its owner. The account of the case in *The Indianapolis Star* is as follows:

"Collection of the \$11 and \$12 monthly rents stopped when Moore turned the building over to the county. The place was ordered vacated, but most of the tenants ignored the order and stayed on as 'squatters.'

"They still are there. The building never was wired for electricity and tenants use coal oil lamps. Filthy privies and piles of trash surrounding the building attract rats and flies in droves. Recently their sources of water, a nearby hydrant, was shut off.

"Doors and fixtures in vacant units were ripped away last winter and dumped into stoves for fire wood.

"When asked why the commissioners had not complied with orders from the city to raze the building, Dr. Golden P. Silver, president of the county commissioners, said, "The county has been too busy progressing to get around to it.'" *The Indianapolis Star*, Aug. 24, 1953, § 1, p. 2, col. 2.

Substantially similar problems have very recently been brought to light in Chicago. State's Attorney Gutknecht, after recognizing the fact that enforcement of the building and fire ordinances is lacking, stated that enforcement would mean 100,000 would be tossed into the street. See *The Chicago Tribune*, Sept. 12, 1953, § 1, p. 2, col. 1.

38. Credit for the Baltimore Plan is given to G. Yates Cook, former Director of the Baltimore Health Department's Housing Bureau. See *Louisville Courier-Journal*, March 1, 1953, § 5, p. 7, col. 1.

The article states:

". . . [T]he Baltimore Plan has been pointed out as a model of community action against the spreading blight of slums in the nation's cities—large and small.

"Its most recent accolade came from the National Municipal League, which named Baltimore one of 11 'all-America cities' for self-improvement work through 'citizen action.'" *Ibid.*

interest necessary to prevent blight. Joint inspection and enforcement of the fire, building and the city housing codes are made in a structure to structure campaign on a block to block basis.³⁹

In 1947 two additions were made to the plan. The police department joined the operations by assigning twenty sanitarians under the supervision of a police inspector to help in the enforcement of various codes. At the same time a city housing court was established to handle all cases involving violations of any of the codes relating to housing, thereby assuring prompt and skilled handling of such cases. The success of the plan is more than encouraging. The concentration of municipal authority in the housing court has awakened public interest and prompted an increase of voluntary compliance with the codes. The report of the Baltimore city housing court for the year May, 1951, to April, 1952, indicates that a total of 688 cases were tried.⁴⁰ Although only 368 convictions were obtained, the report states that 66,576 violations were abated on notice before summons to the housing court was issued. The report does not indulge in any speculation as to how many violations were abated prior to notice or even inspection.

This success is undoubtedly due primarily to the interest of the municipality in the elimination of blight rather than just eliminating its results. An exact imitation of Baltimore's procedures is probably not as important as the attainment of the cooperation and interest in the municipal agencies which that project has accomplished. However, the "Baltimore Plan" is well worth extensive study because of its salutary results in getting "before the fact" compliance with its housing regulations. Such "before the fact" compliance is the real deterrent of blight in the third stage of its operation.

There remains, nevertheless, the possibility of preventing blight one step sooner, or in stage two.⁴¹ Here the only discernible evidence of the operation of blight is a steady decline in property value, a high turnover in inhabitants, or perhaps a home in need of painting.⁴² This stage begins upon completion of new dwellings and ends with the first readily ascer-

39. See WILLIAMS, *op. cit. supra* note 25, in which the workings of the Baltimore Plan are described in some detail. See also *Signs of a Better Baltimore*, a booklet issued as a joint statement by the Housing Authority of Baltimore City, Baltimore Redevelopment Commission, and Baltimore City Health Department.

40. BROWN AND McALISTER, REPORT OF THE HOUSING COURT OF BALTIMORE CITY (1952).

41. The Russian system represents the extreme in the use of governmental power to control everything including blight. It is interesting to note that their problems with blight are even more difficult than those in this country. See HAZARD, *SOVIET HOUSING LAW* (1939).

42. Housing in the second stage of blight is characteristically sound. Basic repairs are still being made. However, there is a tendency to avoid "aesthetic" repairs such

tainable threat to health and safety. Substantial legal and administrative obstacles would have to be overcome before extensive employment of the police power would be possible. Forcing a man to cut his lawn or paint his home would seemingly encounter the arguments advanced against planning laws aimed at aesthetic values.⁴³ The reasonable relationship between a decline of property values and the health and safety of the community might not be readily perceptible.⁴⁴

Even assuming, however, that the legal objections were overcome, practical problems of administration and enforcement preclude utilization today of governmental police power action.⁴⁵ Additionally, as in stage three, satisfactory police power ordinances even with suitable enforcement procedures cannot, without sufficient public support, deter blight. While such support probably could not be elicited for governmental control, public support for organized private action appears more readily obtainable.

The problem in stage two is that of stirring the inhabitants of a blighted area into action. Just as enlightened public officials can obtain

as painting, yard cleaning, and careful trash disposal to some extent. This tendency, however, when it has increased progressively, will eventually result in an immediate physical threat to the public health and safety.

43. See *Mansfield & Swett v. Town of West Orange*, 120 N.J.L. 145, 160, 198 Atl. 225, 233 (1938) (subdivision control); Sayre, *Aesthetics and Property Values*, 35 A. B. A. J. 471 (1949) (zoning). Presently the police power, through zoning laws, limitedly controls the physical factors, which are however, only slightly active in stage two. Hence, the declaring of nonconforming uses serves to eliminate undesirable surrounding uses which tend to contribute to the blighting of residential areas. The primary factor in stage two is economic, however, and is reflected by aesthetic considerations. Hence, effective control would have to deal in some manner with the economic factor. Compare *Schneider v. Dist. of Columbia*, 22 U. S. L. WEEK 2201 (D.C., Nov. 10, 1953).

44. It appears that exercise of the police power for aesthetic considerations would be less acceptable than in relation to subdividing regulations. It is more likely that the court would feel less compunction when dealing with a subdivider, a builder, or even an individual building a house than when dealing with a family already established in a home and perhaps needing all funds for other necessities. The court, in the subdividing situation, can exercise "before the act" enforcement. The impact of this consideration is illustrated in a recent action by a planning board in Garden City, New York. The board was given power by the city council to disapprove applications for residential building permits if design is either too similar or different from neighboring houses. The board also may require relocation of a proposed building to achieve a more attractive appearance. See *Louisville Courier-Journal*, Feb. 15, 1953, § 3, p. 14, col. 1.

45. It is difficult to imagine an effective exercise of the police powers in this stage. Possibly home owners could be required to keep the value of their homes at a certain percentage of the original cost of that home. It is difficult to devise a system of value judgments upon which such a law could be based. Periodic painting and restoration might be required or a board set up to determine what houses need repair and what repairs are needed. All of the proposals seem almost absurd in our society. Municipal authorities have not always been overly successful in keeping streets and other public utilities in repair. It would probably be utterly inefficacious to attempt to make them responsible for the housekeeping of every home in the city.

“before the fact” compliance with housing ordinances so can enlightened municipal governments stir citizens to voluntary action in defense of their homes. There is at least one effort, by a private interest however, that well illustrates this fact. In the so called “Waverly Experiment”⁴⁶ the Home Owners Loan Corporation combated the second stage of blight with an appreciable amount of success. Their experiment involved three main steps: first, the gathering of the necessary information, then the presentation of that information to the inhabitants of the area selected for the experiment, and finally the formulation of long range plans.

In step one, of the “Waverly Experiment” a survey was made which included every detail which might conceivably have some influence on the operation of blight.⁴⁷ From this information the nature of the threatening blight was determined. In step two, these facts and conclusions were presented to the people of the area through meetings, social clubs, and service organizations. Suggestions were made for the immediate elimination of the most glaring factors such as dilapidated buildings or accumulations of trash, which often represented stage three conditions. The forceful presentation of this information coupled with the immediate results obtained were sufficient to win the support of the inhabitants of the area, which is not surprising when the personal interest most people take in their home is considered. Lastly long range plans for improvements which could not be quickly and easily made, such as the straightening of streets and the enlarging of park facilities, were formulated. This long range planning was carefully integrated with the planning and zoning efforts of the city, and all foreseeable contingencies were considered in an attempt to insure the continued desirability of the area.

It is probably too early to evaluate the success of the “Waverly Experiment,” but the report of that experiment indicates that an appreciable measure of progress was made.⁴⁸ It would not be difficult for a municipality to instigate similar projects. A plan such as that represented

46. See WAVERLY, A STUDY IN NEIGHBORHOOD CONSERVATION (1940).

47. The use of each piece of property in the area was ascertained, as well as its ownership, the state of its title and the condition of the building thereon. The habits, nationality and financial conditions of the inhabitants were studied. Maps were drawn showing the location of all parks, schools, churches, streets, water mains and electric lines. *Ibid.*

48. The report contains pictures and statistics of progress actually made in the Waverly area. Perhaps the most eloquent proof of the success of the experiment is represented by the observation in the report that the incidence of delinquency and foreclosure on mortgages owned by the corporation in the area had dropped since the experiment had been in operation. *Ibid.*

by the "Neighborhood Improvement Act"⁴⁹ proposed at the end of the report of the "Waverly Experiment" seems practical.⁵⁰

This plan provides for the division of the city or municipality into "neighborhoods"⁵¹ by the planning commission or governing body. After hearings in which division is discussed and, if approved, adopted, sixty per cent of the property owners in each neighborhood may present a plan for the improvement or restoration of their neighborhood. The plan presented may be very broad in its scope including such things as zoning or rezoning, street improvements, parks, playgrounds, location of public utilities, neighborhood planting and landscaping, and building restrictions. The plan, when adopted, is technically enforceable as a public ordinance. The success of this entire act, however, depends upon the organization and operation of "neighborhood associations."

The association, with assistance from the municipality, does what was done by the Home Owners Loan Corporation in the "Waverly Experiment." The association prepares the plan, presents it to the planning commission, and is responsible for its amendments and continued effectiveness, as well as the maintenance of public interest. It is apparent that the crux of this type of program is its ability to gain the support of the inhabitants of each neighborhood.

The skeptic who views such municipal efforts as an idealistic dream should be reminded that few people fail to react vigorously upon the realization that their own homes are threatened. Moreover, the inhabitants of this country are noted for their tendency to be "joiners;"⁵² consequently, associations for the improvement of neighborhoods have been established even without municipal encouragement.⁵³

Blight cannot be successfully prevented without the active cooperation of individual citizens. Leaders of municipal governments must

49. See *WAVERLY, op. cit. supra* note 46, App. c.

50. It proceeds on a theory well known to the Midwestern states where the responsibility for the draining of farm land has been turned over to the farmers. Laws allow a certain percentage of the farmers affected by an existing or proposed ditch to petition the county in which it is located to clean or construct the ditch apportioning the cost among such farmers according to their benefit. See *IND. ANN. STAT.*, § 27-104 (Burns Repl. 1948).

51. The problem of defining a neighborhood for purposes of combating blight is a largely unexplored and very difficult one. The discussion of that problem will be left to other writers. See Bartholomew, *The Neighborhood—Key to Urban Redemption* in *AMERICAN SOCIETY OF PLANNING OFFICIALS, NATIONAL CONFERENCE ON PLANNING* (1941).

52. See *LASKI, GRAMMER OF POLITICS* (1925); *HOBHOUSE, ELEMENTS OF SOCIAL JUSTICE* (1922). See also Mr. Justice Frankfurter's dissent, *Garner v. Board of Public Works of Los Angeles*, 341 U.S. 716, 728 (1951).

53. Stuart Chase describes an organization in Chicago known as the Hyde Park-Kenwood Community conference started by a group of Quakers living in the area which is composed of about 1,000 acres and 72,000 persons on Chicago's South Side.

recognize their responsibility to provide the means for willing residents to protect their homes from blight, and the methods by which recalcitrant property owners can be induced to forestall this process of gradual deterioration.

EQUAL PROTECTION AND ATTEMPTS TO AVOID "STATE ACTION"

The Iroquois Amphitheatre, built by the city of Louisville, Kentucky, as part of its park system, was leased to the Louisville Park Theatrical Association, a private organization, for the purpose of presenting theatrical productions at a reasonable cost to the citizens of Louisville.¹ The city reserved the right to make rules and regulations to assure good order—among these was the policy of denying admission to Negroes.² The city maintained the Amphitheatre in clean condition and received all profits accruing from its operation.³ The lease also recited that the Theatrical

It now has about 100 "blocks" organized with 1,000 members paying dues of \$5 per year and about 1,200 additional active participants and volunteers including Herbert Thelen, professor of social science at the University of Chicago.

The conference was originally organized in an attempt to do something about living conditions in the area including inadequate housing facilities, increases in crime, overcrowded schools and inadequate playgrounds. It has expanded its operation to include anything that is connected with living conditions and is a worthy opponent of blight. It operates in a strictly democratic manner along the pattern of a town meeting.

Mr. Chase gives five basic ideas upon which the conference operates:

"1. Blighted areas are a growing problem in many American cities, depressing land values, threatening homeowners.

"2. Racial segregation in housing is not legal now that the U. S. Supreme Court has decided that 'restrictive covenants' cannot be enforced. If integration is bound to come, a way must be found whereby the races can live peaceably together.

"3. Urban blight and deterioration cannot be halted by reformers, no matter how consecrated. If the problem is to be solved, the people themselves must do it, *all* the people in the area, working together.

"4. The interest and energy of the people, however, are not enough. Facts must be available instead of rumors, and special techniques are needed to cope with complex conditions. This means some kind of central clearinghouse which can channel facts and skills from experts to people. But the central office should produce tools only when they are called for. Responsibility should remain with the people.

"5. No matter how well equipped to meet local problems the people may be, they are at the mercy of larger forces: population movements, changing industrial patterns, highway and traffic developments, federal and state legislation. Therefore, the people must link themselves with a broader organization which has its eye continually on these greater forces." Readers Digest, May, 1953, pp. 44-45.

1. Sweeney v. City of Louisville, 102 F. Supp. 525, 528 (W.D. Ky. 1951).

2. *Id.* at 528, 529.

3. "It was agreed that the Association would pay the City any profit realized from the operation, less \$5,000, which the Association originally contributed to the