

Redevelopment-Issue Paper

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Policy Guide Development Process
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Legislative and Policy Committee

PURPOSES

The Legislative and Policy Committee has identified the following reasons to consider development of a policy guide on redevelopment

Why This Topic Is of Interest to APA

1. **Redevelopment practices are inconsistent from state to state**, and the quality of the resulting redevelopment varies widely across the nation.
2. While redevelopment has emerged as a significant specialty in public practice, **there are few degree programs** across the country focused specifically on urban and rural redevelopment.
3. **Planners, who in the early years of redevelopment practice were leaders in defining the scope and practice of redevelopment, are often eclipsed today** by special interest redevelopment organizations that may or may not have the broadest possible perspective
4. APA, as a representative of the planning movement, **has not consistently consulted** with those organizations that serve similar roles to the community of housing and redevelopment officials.
5. To the extent that planners remain a significant component of redevelopment practice, **redevelopment provides a significant link** between the development of plans for revitalization of urban areas, and the implementation needed to see those plans executed.
6. Redevelopment agencies across the country **remain a significant source of funding** for planning programs and their implementation.
7. While many redevelopment organizations focus on the traditional model of urban redevelopment, there is increasing **interest and need for policy direction in the areas of rural redevelopment**.

Trends Affecting the Practice of Redevelopment

(Contributed by Deborah Rosenthal, APA Amicus Committee)

1. **Changing Role of Redevelopment.** Redevelopment is now seen by local agencies as almost exclusively a tool for economic development rather than a tool for physical redevelopment. This has affected almost everything about how it functions, from where it is located in the city

government, to how eminent domain is used, to how we define blight, to how it is perceived by stakeholders, to the type of property which is condemned.

2. **Changing Definition of Blight.** In many cases today, the "blights" to be eliminated are not the grotesque living conditions or deteriorated industrial areas planners thought urban renewal should address in the 1950's and 1960's, but simply under-performing commercial areas.
3. **Effectiveness of Planning in Redevelopment.** Planning has not been as effective as we might like in keeping a central place in the economic engine. It may also be that some of the new models will have different approaches for "economic redevelopment" rather than "physical redevelopment" -- currently we try to stuff clearly economic proposals into physical packages, with increasing opposition. Some of the requirements for residential redevelopment to be coupled with commercial highlight this split.

Why Action Is Needed

A range of new threats to effective redevelopment propel this topic to the forefront

1. **State Legislative Attacks on Local Government Authority Have Eroded Redevelopment.** Bills introduced over the past five years in Arizona and California, for instance, sought to limit or repeal local governments' authority to sell condemned property to developers. This is fueled in part by increasing public perception that redevelopment laws are used to favor wealthy developers rather than to promote the public good.
2. **Redevelopment Finance Has Become Increasingly Complex.** The tools and techniques of redevelopment now require a large and complex team of financing specialists, underwriters, fiscal analysts, and others.
3. **Abuse of Process.** The same procedural protections that we count on to protect the rights of individual property owners can also be used to thwart legitimate redevelopment.
4. **The Rules of the Game are Changing.** Legislative action over the past day has weakened the power of agencies; expanded the breadth of citizen participation; increased the avenues for legal challenge to redevelopment practice; changed the formulas for tax sharing in those states where tax increment (also known as tax allocation) financing is used as the principle vehicle; changed the rules associated with bonding.
5. **The Original Purposes of Effective Redevelopment Have Been Subverted.** In some peoples' minds, the original purposes of redevelopment – the provision of safe, sanitary, and affordable housing, the elimination of blight, and the revitalization of local economies – has been replaced by a zero-sum game in which communities compete for increasingly small shares of retail activity by pouring redevelopment resources into retail recruitment and attraction. Tax and land use laws in some states promote the zero-sum game to the detriment

of effective planning, and many redevelopment agencies are reluctant to give up what little they have been able to acquire.

What Issues Should a Redevelopment Policy Guide Address?

1. **The Role of the Planning Process in Redevelopment.** The policy guide should properly assess how and where good planning fits into the process of forming, refining, changing and terminating or disbanding redevelopment agencies.
2. **The Role of Planning Agencies in Redevelopment.** At one time, redevelopment agencies were often directly associated with planning agencies; today, the sheer financial and implementation power associated with these programs, and the state laws that support them, often shift all power to the CAO's, Mayor's or City Manager's office.
3. **Brownfields and Greyfields Development:** what represents an appropriate state of practice. How can these issues be linked to other policy guides?
4. **New Models for Redevelopment:** are there new models for redevelopment practice that are more user friendly, less threatening, or more balanced in terms of considering fiscal, environmental, planning and other concerns?
5. **Eminent Domain:** What are appropriate uses, and restrictions on the uses of, eminent domain? What constitutes public purpose?
6. **Blight:** What constitutes a reasonable definition of blight? How can misuse of blight findings be addressed? RDA abuse in some parts of the county includes calling sagebrush "blight." It is used to assist in the development of [never before developed] vacant land, rather than to eliminate true blight – a use of redevelopment powers which was likely not intended by those who framed the law.
7. **Adaptive Reuse:** Are redevelopment agencies properly utilizing the potential associated with their historic building stock, or are the rules of redevelopment designed (purposely or not) to discourage the reuse, restoration or conservation of historic structures?
8. **Neighborhood Conservation:** What part does neighborhood conservation play in effective redevelopment?
9. **Process -- Empowerment vs. Challenge:** How can the stakeholders in communities subject to redevelopment be empowered in such manner as to create vital, effective redevelopment processes as opposed to projects fraught with delay, contention and legal challenges? What is the role of public education? How to avoid co-option?
10. **When is Redevelopment Appropriate?** The policy guide might examine those instances when redevelopment is appropriate – and how it might be determined appropriate by some

criteria for public involvement. We can expect to see ever more private redevelopment as land use patterns and buildings become obsolete. When does it qualify for public funds/assistance? Brownfields and greyfields may be areas where the public involvement is crucial.

Cases That Might Be Consulted

Several correspondents offered recent redevelopment cases from across the nation that might be considered during the research phase.

Cypress, California. A new California case recently filed in the City of Cypress challenges a redevelopment agency's authority to use its eminent domain powers to acquire a church-owned property for a commercial redevelopment project. That case actually merges redevelopment issues with RLUIPA, the Religious Land Uses and Institutionalized Persons Act.

The case was decided earlier this week. The Court held that the City could not exercise the power of eminent domain against the church property for redevelopment purposes. By itself, the case holding would seem to make planners shudder -- but the facts are something else again -- with pretty egregious public conduct (*is a vacant lot in the middle of other vacant lots ever "blighted"?* *The judge didn't think so.*)

Mammoth Lakes, California. The recent *Mammoth* case in California is also interesting. The Court refused to let Mammoth adopt a redevelopment plan designed to upgrade its town center into an upscale ski resort rather than a slight down-at-the heels ski town full of aging condos. The court chastised the Town for using redevelopment as a tool to build its municipal wish list.

Some other cases of note that might be consulted:

- *Housing and Redevelopment Authority of Richfield, MN vs Walser Auto Sales* (<http://www.lawlibrary.mn.us/archive/supct/0204/c801309.htm>)
- *99 Cents Stores v. Lancaster* (California)
- *Southwestern Illinois Development Authority v. National City Environmental, LLC*, 119 Ill. 2nd 225 (2002).

What Potential Partners Should Be at The Table?

The APA Planning and Law Division has already indicated its interest. Deborah Rosenthal notes that much of the "action" recently has been in court, as the judges look anew at the limits of the Fifth Amendment.

The ABA Local Government Section would probably also be interested,

and a good source for legal trends nationally. We would also recommend that the following partners be consulted in the policy guide's development:

- APA Economic Development Division
- APA Planning and Management Division
- National Association of Housing and Redevelopment Officials
- California Redevelopment Association (*has several publications that may be of value: Citizens Guide to Redevelopment, etc.*)
- Urban Land Institute

In addition, Deborah Rosenthal of the Planning and Law Division notes that David Callies has a particular interest in this area if he can be helpful.