

IMPACT OF PROJECT ANNOUNCEMENT ON
AREAS PLANNED FOR URBAN RENEWAL

by
PHILIP C. FROEDER

B.S., Columbia University
(1960)

SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE
DEGREE OF MASTER IN CITY PLANNING

at the
MASSACHUSETTS INSTITUTE OF TECHNOLOGY
June, 1964

Signature of Author
Department of City and Regional Planning, May 22, 1964

Certified by
Thesis Supervisor

Accepted by
Chairman, Departmental Committee on Graduate Students

A B S T R A C T

IMPACT OF PROJECT ANNOUNCEMENT ON AREAS PLANNED FOR
URBAN RENEWAL by Philip C. Froeder

Submitted to the Department of City and Regional Planning, M.I.T., on May 22, 1964, in partial fulfillment of the requirements of the degree of Master in City Planning.

This study is prompted by a recognition that an expanding use of the eminent domain power in the urban renewal program calls for assurances that ownership and tenancy rights are adequately protected. The effects on property interests in areas designated for renewal treatment are determined during the time interval preceding condemnation.

In order to illustrate what takes place in the pre-condemnation time interval, two case studies in renewal delay are investigated. The circumstances of each renewal plan are recounted, and the impact of project announcement is revealed in on-going property improvement activity, occupancy levels in housing and commercial space, and in real estate market activity. Long term before and after trends are reported, and compared for differences by use of adjoining control areas.

An evaluation of the findings is considered from both the public and private interest viewpoints. Whereas the observed curtailment in property improvement activity is considered as serving the public in the interest of resource scarcity, similar public advantage is not gained by the insecure position in which individual private interests are placed. Although no discernible impact on occupancy levels was found, an almost complete standstill in real estate transfers poses a loss of the right to sell one's property. Real estate, if considered as a commodity, has lost its marketability. Compensation for such loss, and other so-called incidental losses in eminent domain, are reviewed in light of existing judicial rulings. Inequity is found to exist in present handlings of such losses, induced by out-moded principles which make for "harsh" law.

Additional statutory safeguards are recommended so as to preclude damaging exposure of private interests, and to assure that constructive ends satisfy both the public and private interests at stake during this formative period of the renewal program.

THESIS SUPERVISOR: JOHN T. HOWARD

TITLE: Head, Department of City & Regional Planning, M. I. T.

LETTER OF TRANSMITTAL

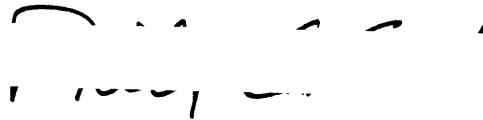
Massachusetts Institute of Technology
Cambridge, Massachusetts
May 22, 1964

Professor John T. Howard, Head
Department of City and Regional Planning
Massachusetts Institute of Technology
Cambridge, Massachusetts

Dear Professor Howard:

In partial fulfillment of the requirements for the degree of
Master in City Planning, I submit this thesis entitled "Impact of
Project Announcement on Areas Planned for Urban Renewal."

Sincerely,



Philip C. Froeder

C O N T E N T S

ABSTRACT	ii
LETTER OF TRANSMITTAL	iii
LIST OF TABLES, CHARTS AND MAPS	v
ACKNOWLEDGEMENTS	vii
I. INTRODUCTION	1
A. Motivation Behind the Research	1
B. Summary of Findings	6
C. Summary of Implications	7
D. Summary of Conclusions	8
II. NOTE ON RESEARCH METHODS	9
III. IMPACT FINDINGS CASE I: CADMAN PLAZA RENEWAL AREA	19
A. Qualifying & Descriptive Data	19
B. Property Improvement & New Construction Activity	30
C. Occupancy Determination	40
D. Real Estate Market Activity	45
IV. IMPACT FINDINGS CASE II: PEARL STREET RENEWAL AREA	51
A. Qualifying & Descriptive Data	51
B. Property Improvement & New Construction Activity	58
C. Real Estate Market Activity	67
V. IMPACT EVALUATION: THE PUBLIC INTEREST VIEW	76
A. Data Findings in General	76
B. Particular Circumstances of Cadman Plaza	80
C. Particular Circumstances of Pearl Street	86
VI. IMPACT EVALUATION: THE PRIVATE INTEREST VIEW	91
VII. CONCLUSIONS OF THE RESEARCH	110
VIII. APPENDIX	118
IX. BIBLIOGRAPHY	120

LIST OF TABLES, CHARTS AND MAPS

TABLE 1	Chronology of Events, Cadman Plaza Renewal Area, 1956 - 1963.	22
TABLE 2	Cadman Plaza Control Area Comparability: Quantitative	25
TABLE 3	Cadman Plaza Control Area Comparability: Qualitative	29
TABLE 4	Cadman Plaza: Description of Improvements, January 1950 to November 15, 1962	35
TABLE 5	Cadman Plaza: Description of New Construction, January 1950 to November 15, 1962	39
TABLE 6	Cadman Plaza: Vacancies in Housing Units as of 1960	41
TABLE 7	Cadman Plaza: Retail Space Survey, November 1962	44
TABLE 8	Chronology of Events, Pearl Street Renewal Area, 1957 - 1964	52
TABLE 9	Pearl Street Control Area Comparability: Quantitative	55
TABLE 10	Pearl Street Control Area Comparability: Qualitative	57
TABLE 11	Pearl Street: Description of Improvements, January 1950 to December 1962	62
TABLE 12	Pearl Street: Description of New Construction, January 1950 to December 1962	66
TABLE 13	Pearl Street: Vacancies in Housing Units, 1953-1963	67
TABLE 14	Pearl Street: Vacancies in Housing Units as of 1960	69
TABLE 15	Pearl Street: Commercial & Industrial Occupancy, 1953 - 1963	71
CHART 1	Improvements & New Construction Activity, Cadman Plaza Renewal Area, January 1950 - November 15, 1962	31

LIST OF TABLES, CHARTS AND MAPS

CHART 2	Value of Improvements & New Construction Activity, Cadman Plaza Renewal Area, Jan 1950 - Nov 15, 1962	32
CHART 3	Bonafide Real Estate Transfers, Cadman Plaza Renewal Area, January 1950 to November 15, 1962	47
CHART 4	Improvements & New Construction Activity, Pearl Street Renewal Area, January 1950 to December 1962	59
CHART 5	Value of Improvements & New Construction Activity, Pearl Street Renewal Area, January 1950 - December 1962	60
CHART 6	Bonafide Real Estate Transfers, Pearl Street Renewal Area, February 1959 to December 1962	73
CHART 7	Refinancing Activity, Cadman Plaza Renewal Area, January 1950 to December 15, 1962	Appendix
MAP 1	Orientation Map, Cadman Plaza Renewal Area	20
MAP 2	Boundary Map, Cadman Plaza Renewal Area	21
MAP 3	Existing Land Use in 1962, Cadman Plaza Renewal Area	26
MAP 4	Distribution of Improvements & New Construction, Cadman Plaza Renewal Area, Jan 1950 - Nov 15, 1962	33
MAP 5	Distribution of Real Estate Transfers, Cadman Plaza Renewal Area, January 1950 - November 15, 1962	48
MAP 6	Orientation Map, Pearl Street Renewal Area	53
MAP 7	Boundary Map, Pearl Street Renewal Area	54
MAP 8	Existing Land Use in 1962, Pearl Street Renewal Area	56
MAP 9	Distribution of New Construction and Improvements, Pearl Street Renewal Area, Jan 1950 - Dec 1962	61
MAP 10	Distribution of Real Estate Transfers, Pearl Street Renewal Area, Feb 1959 - December 1962	73

ACKNOWLEDGEMENTS

First, I wish to express special appreciation to my thesis advisor, John T. Howard, for his guidance and sustained interest during the two years it took to bring this thesis to a conclusion. His tempered views and well seasoned comments have provided one of the high points of my stay at the Massachusetts Institute of Technology.

To my employer, Doxiadis Associates, also goes a word of appreciation for their indulgence with me during the formative stage of writing this report. Without the patience of both Nicholas Efessios and Angelos Demetriou, this could not have been accomplished.

Many words of thanks are due Arnold Mytelka for his invaluable assistance in guiding me through the legal maze on which this research partly rests. His review and timely comments on Part VI were particularly helpful.

Others who have helped me in securing the proper contacts or in supplying needed information include Jim Frank and George Beaton. Appreciation also goes to John Reno and John Cavanaugh for their on-the-spot drafting assistance, and to Cathy Wiant for her many hours at the typewriter and sharp eye for suggested improvements.

Finally, the following agencies and organizations are to be dealt all due thanks in allowing me their courteous use of data files which were essential to this research effort:

Brooklyn Real Estate Register
Union County Realty Reporter
Building Department, City Hall, Elizabeth, N. J.
Borough Clerks Office, Municipal Building, Brooklyn, N.Y.
Brooklyn Heights Press

I. INTRODUCTION

A. MOTIVATION BEHIND THE RESEARCH

An expanding role of urban renewal brings with it numerous untested assumptions and unknown effects. The widespread recognition of the need to renew cities has not been matched by an equal appreciation of the complexity of economic and other forces involved.¹ All new programs require time for public support to be built up and public understanding gained, as well as for problems of operation to be worked out. Experimentation and empiric testing of results affords a wide field for research. This paper identifies certain of the side effects of renewal action occurring in areas during the time interval immediately after official designation, on up to the date when condemnation takes place.

1. As observed by William G. Grigsby, Housing Markets and Public Policy, University of Pennsylvania Press, 1963, p. 284.

This is a study in behavioral norms of property caught within the shadow of the eminent domain power. What is the impact on property interests under the expectation of eventual condemnation proceedings? Can the trends set in motion by this event-to-come be regarded as beneficial to the objectives sought by the renewal program, or do certain unexpected consequences occur which might detract from the success of that program?

Answers to questions such as these may remain no more than speculative, but can be provided with greater certainty if based on objective findings. In order to construct an illustration of experience in the time interval context preceding the condemnation event, the present research effort evaluates two case studies in renewal delay. Long term before and after trends are reported for two project areas which have witnessed a drawn-out period of time lapse since their original dates of inception as officially designated renewal areas. The impact of designation is revealed in such aspects as on-going private improvement activity, occupancy levels in housing, occupancy in commercial space, and in real estate transfer activity.

The locales chosen for the investigation are in the New York metropolitan area. Two project areas, one in Brooklyn, New York, and another in Elizabeth, New Jersey, provide the data against which impact

is measured and compared for differences in behavior. The former is the Cadman Plaza Renewal Area, and the latter is the Pearl Street Renewal Area.

The evaluation stemming from these findings is considered from two viewpoints: the public interest and the private interest. Although the collective public interest commonly takes on an overriding importance, the weakened position in which private interests of the few are placed can raise many questions of equitable or fair treatment. The results of this study, therefore, provide some timely clues in an area of urban renewal experience which has been beset by a great deal of apprehension by some, and unconcern by others.²

Critics of the program have variously charged that tenants and owners of a renewal area are the unwitting victims of "involuntary subsidies," or that the act of official designation itself amounts to a taking

2. See, for example, Urban Renewal in Selected Cities: Hearings Before A Subcommittee of the Committee on Banking and Currency, United States Senate, U. S. Government Printing Office, Washington, D. C., 1957, pp. 152-155. During the Cincinnati, Ohio, hearings, statement made by Charles Stamm, Urban Renewal Director, refers to the problem by saying: "At this point we were addressing ourselves to individual property owners who in their dealings with us are giving us a pretty hard time, and justifiably so, because we have this heavy hand on their property, and the sale, or lease, or use of their property is being impaired."

of property because its market value is thereby lessened or destroyed.³ With the event of speedy renewal implementation, such charges are not likely to gain much ground. But with the inadvertent delays which frequently impede such programs,⁴ these charges may warrant serious concern. Possible adverse effects on individual interests may call for changes in public policy measures. For example, the abrupt slow-down in private improvement efforts after designation may have definite reversal effects in areas where rehabilitation may be the objective. In such circumstances a discouragement of further investment may be at odds with private forces at work striving to improve the existing housing stock. The rank assumption of steady deterioration taking place in urban areas has been questioned by Grigsby,⁵ claiming that the many private efforts working toward improvement of the housing stock have made substantial gains in recent years.

3. See, in addition statement in Note, "Urban Renewal: Problems of Eliminating and Preventing Urban Deterioration," 72 Harvard Law Review 504 (1959), p. 504: "The designation of an area or the announcement of a renewal plan usually causes an almost complete cessation of improvement and maintenance in the community, depreciating property values generally."

4. See discussion in article "Red Tape and Relocation Stall Renewal in Suburbs," New York Times, Real Estate Section, September 9, 1962, p. 1.

5. Grigsby, Housing Markets and Public Policy, op. cit., p. 260 & 262: "It is quite probable that there was more (private) improvement in housing accommodations from 1950 to 1960 than in the prior two decades combined....certainly the widespread belief that housing conditions are deteriorating is in need of serious re-examination."

A possibility of project abandonment after a period of time lapse may also pose serious implications, particularly if such abandonment is owing to an overly ambitious or poorly conceived program based on an inadequate realization of the resources needed to carry out the program. The inception of numerous plans at a time when the widened provisions of the Community Renewal Program were not yet available can be pointed to.

The extent to which property rights may be affected during this formative period of the renewal program also attains significance because of the widened scope of the use of eminent domain. Today, private property is taken largely for the purpose of redeveloping the nation, as distinguished from an earlier historical emphasis of vacant land takings in order to promote virgin growth.⁶ A wider and more subtle range of property interests is at stake in developed land as opposed to vacant land interests of an earlier era. The wide latitude of legislative discretion placed within the hands of local governmental agencies by the broadened definition of the general welfare stemming from the 1954 Supreme Court decision in Berman v. Parker⁷ calls for caution in all steps of the

6. Note, "Eminent Domain Valuations in an Age of Redevelopment: Incidental Losses," 67 Yale Law Journal 67 (1957), p. 89.

7. Berman v. Parker, 348 U. S. 26, 75 Sup. Ct. 98, 99 L. Ed 27 (1954).

process. What repercussions does the impending use of this sovereign power exert on existing freedom of interests within areas earmarked for renewal treatment?

Questions such as these have provided the motivation behind the present research effort. It is hoped that the research findings contained in this report will shed some further, if modest, gain to knowledge in this field.

B. SUMMARY OF FINDINGS

The data findings revealed a positive impact with an almost immediate fall off in activity in:

- a. Property improvements.
- b. Real estate transfers.

These trends differed sharply from the control area findings where temporary inhibiting effects coincided with the period of project announcement but thereafter continued an upward trend.

The data findings revealed a negative impact in:

- a. Occupancy in housing.
- b. Occupancy in commercial space.

The levels of occupancy reported in both project areas compared favorably with those found in the control areas.

C. SUMMARY OF IMPLICATIONS

The deviant trends occurring in project area improvements and in real estate transfer activity are considered as serving the public interest as long as certain assumptions regarding the renewal effort are recognized. If project implementation is assured, the curtailment in new investment is encouraged by a resource scarcity policy in the public interest.

The findings of no effect on occupancy levels suggest in part that the claim of widespread adverse impact owing to the impending event of condemnation is an exaggerated one. But the almost complete standstill taking place in real estate transfers suggests possible interference with an individual's right to sell property. Since property can be looked upon as a commodity, such a loss in marketability can be serious.

In general, the data findings take on a shifting meaning because of the values placed on the public interest vis-a-vis individual private interests. Some loss of inconvenience in the interests of the few can be tolerated so long as it is served by a larger public interest. But current interpretation of law as to what makes for a tangible loss of any particular property right is seen to fall within an area of "incidental losses" for which no compensation is given. Many of these so-called

incidental losses actually cover sizeable losses. Inequities abound within this area, making for "harsh" law. Private interests are unnecessarily jeopardized by the uncertainties brought on by the pre-condemnation context.

D. SUMMARY OF CONCLUSIONS

While the federally aided renewal program makes available a number of procedural steps so as to assure sound renewal planning, practice can differ sharply from prescribed procedure. The inherent shortcomings in eminent domain statutes, as well as a prevailing lack of judicial review, are seen to invite an uncritical planning process. The conclusion points to a need for built-in safeguards in statutory authority in the use of eminent domain so as to prevent a further damaging exposure of private interests affected by renewal planning.

II. A NOTE ON RESEARCH METHODS

The following tables, bar charts, maps and analyses present in detail the findings of this research. Principal data sources entering into the two case studies consist of building permit records, subscription real estate directories, city address directories, field surveys and certain additional sources.

Research was aimed at revealing the extent of impact on five issues. These are:

1. Property improvement activity.
2. New construction activity.
3. Occupancy levels in housing.
4. Occupancy in commercial and industrial space.
5. Real estate transfer activity.

The analysis of this data centered upon establishing long term before and after trends in order to measure the extent of possible impact

for each data medium. The inclusion of a control area outside of the project area afforded the means by which to compare differences in behavior occurring both inside and outside of the project locale. The descriptive statistics used for showing trends are quite straightforward by use of bar charts which provide an easy to read profile of behavior over the time span considered. Spot maps supplement this technique by showing the spatial distribution of occurrences both before and after project designation.

Before and after cut-off dates in the data trends coincide with the official designation or declaration of blight periods for the two project areas. Such cut-off dates cannot, of course, be looked upon as providing a precise breaking point in the course of events. The effects of preliminary project announcement alone may already lend some visible influence. In the Pearl Street project research, the year of project announcement was used instead since newspaper coverage had already resulted in sufficient publicity.

Extensive newspaper research was undertaken in order to assure that a causal relationship did, in fact, exist between project designation and any observed deviation in project area data trends from that disclosed in the control area. A wide documentation of local newspaper articles can be readily summoned so as to yield assurances in the matter

of causal effect. It will be seen, for example, that the behavior trends established in the Cadman Plaza research reflect a fairly sensitive register of change growing out of official announcements.

In general, the data sources used for this research project are fairly commonplace in origin and available to anyone wishing to undergo the necessary tedium of data collection. Some reservation may exist as to whether such data material is sufficiently responsive to yield meaningful answers to the questions being asked. How can such seemingly cut-and-dry data provide an audible sounding board against which to gain a telling response as to whether or not serious hardship situations are being experienced by property owners and tenants caught within the shadow of eventual condemnation? An alternative approach in method offered itself in direct owner and tenant interviewing on a sample basis. But such an approach threatened to skirt a realm of subjectivity upon which this investigation clearly could not be based. Because of the somewhat controversial and emotion laden issues being researched, almost any interview technique would entail numerous pitfalls in assuring credibility of findings. The nature of the investigation itself dictated an unassuming and largely secondary source of data devoid of any subjective overtones.

Any validity that the present research effort may have rests on a systematic analysis of a large data array spaced over a time span of

more than a decade in order to arrive at an outline of trends at work. The usefulness of any implications that may be attached to the findings is dependent on the interpretation of significance observed in the data trends. Such significance is directly concerned with questions of volume, and how those volumes have behaved under the influence of renewal project announcement impact. A substantial inhibition of private capital investment within a designated clearance area, for example, may be construed to serve a beneficial public policy, but in another context may be seen as possessing a detrimental effect by further acceleration of the slum formation process.

One limitation of the approach used, however, is that individualized microanalysis is foregone. This is to say that the existence of specialized or atypical "hardship" cases has not been disproven. Such cases can, in fact, be readily pointed to. The study of overall trends attempts rather to delineate the levels of significance at which critical issues of impact are operating. Recommended changes in procedure or of public policy are not generally based on the disadvantages suffered by the atypical few, but rather on the disadvantages suffered by a majority. The renewal process itself countenances adverse impact on a few, so long as such impact can be shown to serve the greater public welfare.

In this respect, the analysis of trend behavior appears suitable.

Evaluation of the data findings also involved a review of the circumstances surrounding both projects. This was done chiefly through newspaper research. Reasons for the delay of each project are outlined, as well as the community reaction to the renewal effort. While such individual circumstances are not directly related to the issues of impact under study, their understanding is necessary in arriving at an evaluation of the differences between the public and private interest and seeing how each has or has not been benefited.

A review of recent law journal articles and legal cases dealing with eminent domain was also undertaken. This review is concerned with evaluating the conflict which takes place between gain and loss in the public interest versus the private interest sectors.

Comment is also in order on the qualifications of the two renewal projects chosen as case studies. Since research programs are invariably limited in scope by the practical matter of available resources, care must be exercised in assuring an "appropriate" selection. The present research effort was guided by five criteria in project selection, listed below in order of importance:

1. The project must exhibit an overt period of time lag between the date of designation on up to any execution activity. Overt is here

defined as covering at least four years .

2. The availability of an unaffected and reasonably comparable control area adjoining the project area. Comparability was established by number of parcels, land use, building types and conditions, and average rentals .

3. Project area should be largely residential in development with a limited spread of secondary commercial and industrial uses so as to yield some diversity in findings without undue thinning-out of results .

4. The type of renewal treatment proposed should be total clearance, as distinguished from a combined clearance and/or rehabilitation program. The possible impact within a context of wholesale clearance was believed to hold sharper sway than the less disruptive expectations encountered in a rehabilitation or conservation program .

5. A high level of local awareness as to the existence of the project should be in evidence . It was believed that such an awareness would maximize the response witnessed in any impact on trends, whereas a converse situation of local apathy might be regarded as offering little in outcome of results . Also, the locales chosen should display an already established precedence of renewal activity -- preferably with a nearby area which has already been cleared or redeveloped . This would leave no chance of mistaking what the renewal business is all about in

the eyes of project tenant and ownership interests .

The first two of these five criteria need little explanation since they are a fairly direct outgrowth from the nature of the research effort . Since opinion may differ as to what constitutes an unnecessarily long time interval , the strategy was to select something which was blatantly overdue in terms of execution . Such an overdue time interval would also allow sufficient duration for possible effects to take on a marked trend or behavior pattern .

Criteria 3 and 4 are constraints intended to direct the focus of the research into the more common areas of renewal experience encountered by the program to date . The choice of two case studies , each of a primarily residential character , was deemed preferable in order to facilitate meaningful comparisons between the two sets of findings .

The last criterion relating to a high local image of project awareness was a deliberate effort to weight the choice of project specimens in favor of maximum response in data findings . Since the choice of projects attempted to select what one would reasonably consider as "typical" renewal projects , this last factor must be carefully qualified as to intent . By electing project areas which displayed some apparent symptoms of agitation , the approach took advantage of a not uncommon device in research methodology ; i . e . , by analogy , a research physician

undertaking an investigation of the nature of some uncommon disease would initially diagnose a patient beset by rampant symptoms of the disease. This would provide abundant tissue on which to perform microscopic and other laboratory tests. A later stage of the research program might find it useful to diagnose a patient with only incipient signs of the symptom in order to shed light on the evolutionary process of the disease. But such a latter research stage might have to be initially foregone in view of the limitations set by available resources and time. In a like manner, the present research effort relegated itself to project specimens which were "live issue" projects, as distinguished from possible "dud" projects where apathy of symptoms were the rule of the day.

The geographic limits of project selection were confined to Regions I and II as defined by the Urban Renewal Administration. Current Project Status Reports of all projects within Region I (New England), and New York and New Jersey of Region II were examined, as supplied by URA Headquarters offices. All projects displaying a time lag interval of three years were considered as eligible for case studies. Within this restriction (Criterion 1), only seven projects offered themselves as possible candidates. Appendix A contains a listing of these projects with a brief statement of disposition for each. In general, a site inspection and discussions with some official associated with each project

were undertaken as part of the screening out process in the project selection phase.

Selection was eventually narrowed down to two projects -- each within a different city and state, but both of which were purportedly "live issue" projects. The project in Elizabeth, New Jersey, in brief, was embroiled in litigation brought on by property owners in an attempt to defeat the municipality's blight determination. Within a two block distance lay an already cleared project site, also in limbo.¹ The Brooklyn project, in turn, provided a setting of vigorous local community reaction because of concern over the merits of project proposals being advanced by the now defunct Slum Clearance Committee headed by Robert Moses at the time. It appears that the Cadman Plaza project is a part of the Brooklyn Heights district containing a fine assemblage of historic pre-civil war buildings valued for their pedigree. Feelings ran high as to what might be the most sensitive proposal which would assure harmony with the surrounding environment. The adjoining Cadman Plaza Park was land which had been cleared during the early 1950s, thereby providing the actual image of what the eminent domain power could do.

Neither of these two background contexts appeared to be so atypical or unique so as to question the usefulness of findings as valid research

1. The 14 acre Washington Avenue Renewal Area in which site clearance started January, 1959.

specimens. As "weighted" samples, the findings stemming from these two case studies cannot be equated with all other projects operating within a context of simple time lag. Generalizations may have to be tempered down or curtailed altogether in view of this element of bias. But for that matter, the ability to arrive at valid generalizations is faced with broader problems. While the use of two case studies in place of only one may to some degree broaden this ability, it becomes apparent that these two case studies are merely samples out of a larger universe of many urban renewal projects. Any additional restriction imposed by the use of an exaggerated context is secondary in view of an expedient trigger gained for making certain generalizations not otherwise possible.

III. IMPACT FINDINGS
CASE I: CADMAN PLAZA

A. QUALIFYING AND DESCRIPTIVE DATA

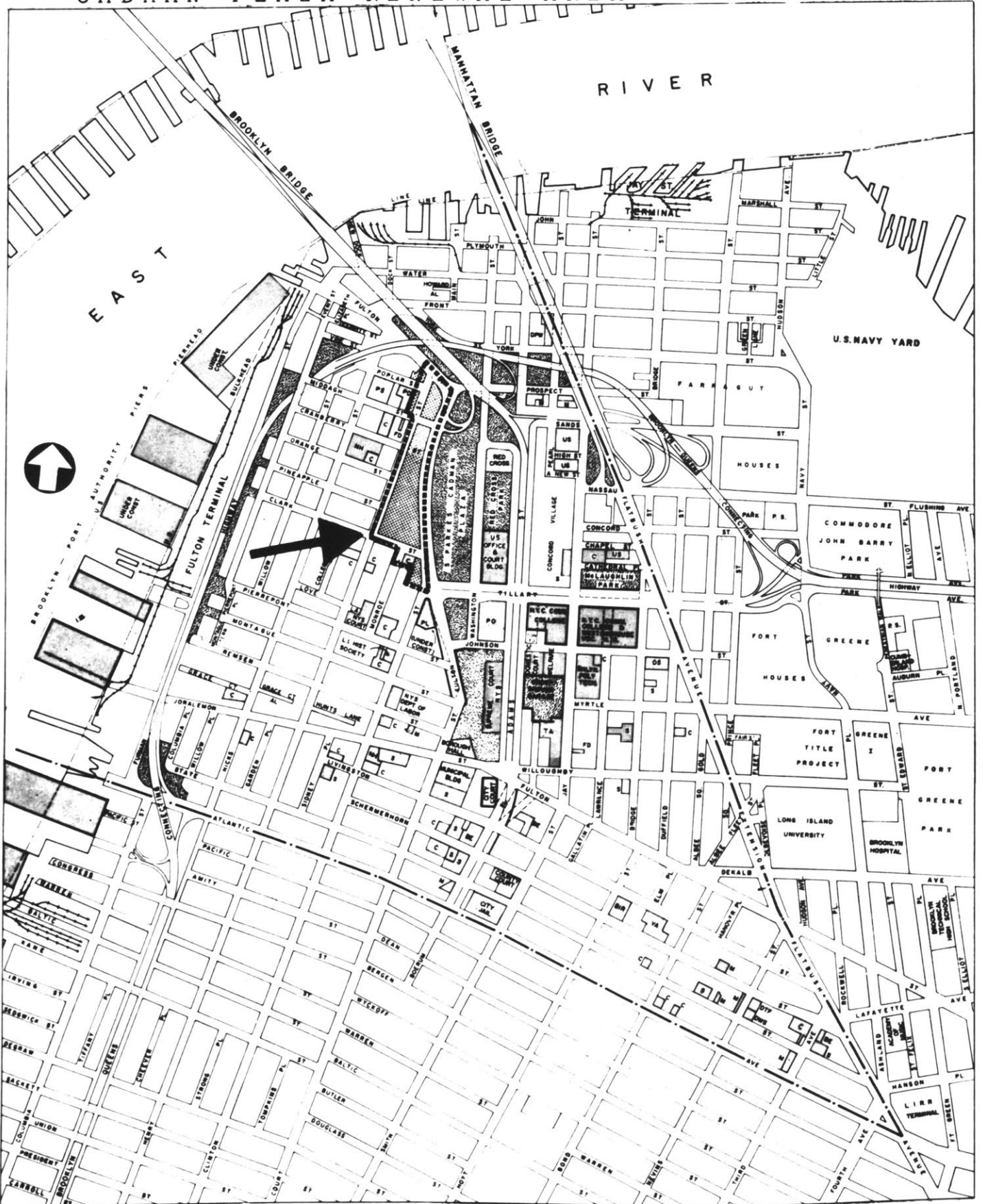
1. Chronology of Events and Land Uses.

The Cadman Plaza Renewal area consists of a five block section on the west side of the Brooklyn Civic Center, north of Borough Hall, Brooklyn. The ramps to the Brooklyn Bridge frame its northern boundary, thereby marking this locale as an important cross-roads in Brooklyn's historical ties with Manhattan. Brooklyn's central business district is a short distance away.

In terms of geographic position, this 17 acre project has locational characteristics common to many urban renewal projects by falling within the ring of development surrounding the C.B.D. For in the Cadman Plaza case, the transitional land use changes exerting pressure upon it were resolved only during the past decade. The extensive land clearance which formed the site of the Civic Center plaza adjoining its eastern edge dates back to the early 50's. The development

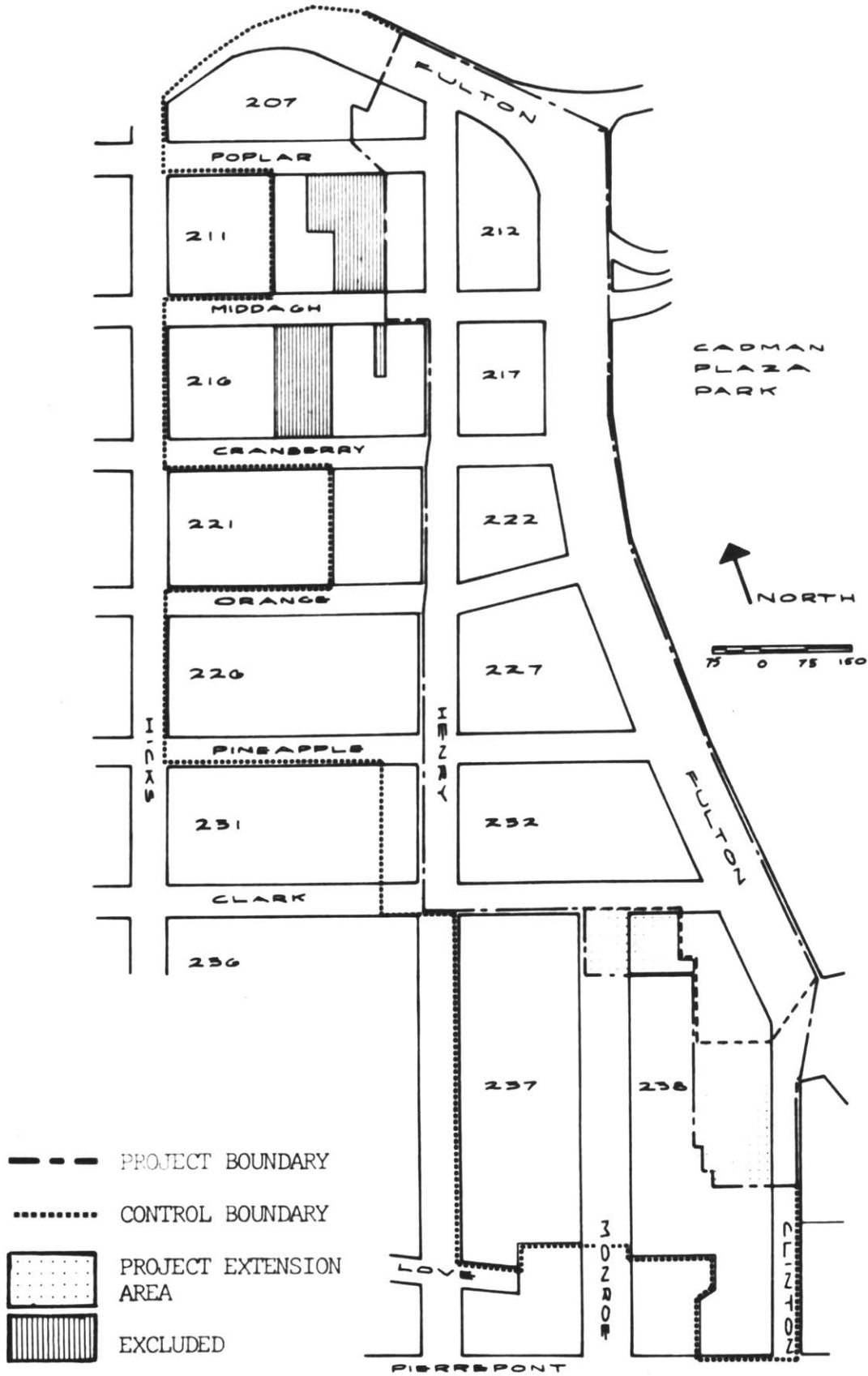
ORIENTATION MAP

CADMAN PLAZA RENEWAL AREA



BOUNDARY MAP

CADMAN PLAZA RENEWAL AREA



- PROJECT BOUNDARY
- CONTROL BOUNDARY
- [Dotted Pattern] PROJECT EXTENSION AREA
- [Vertical Hatching] EXCLUDED

cleared for this open space improvement typifies that which now still remains in the project area: a mixture of commercial buildings along with housing.

Along the project's western edge, the mixture of uses unravels abruptly into an area of noteworthy, if old, housing. This is the Brooklyn Heights Community, known as Manhattan's first suburb and presently still containing a quiet wealth of pre-civil war town houses zealously guarded by its residents.¹ The rationale for the redevelopment proposal in the project area can therefore be seen as an inevitable consequence of recent changes in its adjoining land use pattern.

TABLE 1. CHRONOLOGY OF EVENTS: CADMAN PLAZA RENEWAL AREA, R-25

- 10 - 4 - 1956 First public announcement by Slum Clearance Committee. Planning Commission and Board of Estimate authorize Application for Survey and Planning. Local newspaper, Brooklyn Heights Press, carries front page article.
- 11 - 27 - 1956 Planning Commission designates area as "Substandard and Insanitary" suitable for renewal treatment.
- 4 - - 1957 Urban Renewal Administration approves Survey & Planning Application. Lack of federal funds had prevented earlier approval, resulting in a two year period of inactivity.

1. For an architectural history of the Brooklyn Heights Area, see Clay Lancaster, Old Brooklyn Heights, Charles E. Tuttle Co., Rutland, Vermont, 1961.

TABLE 1. (CONTINUED) CHRONOLOGY OF EVENTS: CADMAN PLAZA

- 2 - - 1959 Possible southward extension of project is announded.
- 2 - 12 - 1959 Brooklyn Heights Press expresses editorial concern over uncertainties created by extension possibility.
- 3 - 12 - 1959 Extension at south end clarified; only the abandoned church at the corner of Clark & Monroe to be included.
- 4 - - 1959 First plan proposals made public: Slum Clearance Committee issues report and submits it to Board of Estimate for approval. Local community opposes specific elements of the plan calling for complete luxury rental development.
- 4 - - 1959 Possible northern boundary extension discussed at public hearing.
- 7 - 9 - 1959 Community Conservation & Improvement Council submits counter plan calling for co-operative development. Local groups action is supported by a sponsor.
- 8 - - 1959 Slum Clearance Committee rejects proposal by C.C.I.C. Front page editorial comment in Brooklyn Heights Press calls for community opposition to Slum Clearance Committee. (7-20-1959 issue).
- 2 - 4 - 1960 Possibility of additional southward boundary extension again arises as church property is officially included as part of project.
- 6 - 1 - 1960 Slum Clearance Committee is dissolved and replaced by the Housing & Redevelopment Board. H.R.B. announces intention to proceed with Cadman Plaza, but only after a thorough review.
- 6 - 9 - 1960 Possibility of a general northwest extension of project area arises. Local newspaper article publishes map showing addition of four blocks. Community opposition mounts; B.H.P. 6-9-60 & 6-16-60.

TABLE 1. (CONTINUED) CHRONOLOGY OF EVENTS: CADMAN PLAZA

- 10 - - 1960 H.R.B. announces a compromise plan calling for both Co-op and rental redevelopment in the middle income rental range.
- 10 - 12 - 1961 H.H.F.A. reserves capital grant funds for Cadman Plaza.
- 3 - 21 - 1962 H.R.B. issues second revised plan, calling for total Co-op development.
- 4 - - 1962 Planning Commission holds public hearing over plan, and redesignates the area in conformance with revised statutory requirements.
- 5 - 2 - 1962 City Planning Commission approves H.R.B. plan.
- 6 - 26 - 1962 Board of Estimate approves plan.
- 12 - - 1962 Project site is officially condemned.
- 9 - 10 - 1963 City conveys land to sponsor.

2. Comparability of the Control Area

The control area in relation to the project is shown on the accompanying map #2. Irregularities in the control limits are caused by the location of several public and semi-public uses which were excluded. Since the project area has no public uses (except for one church), their exclusion from the control area appeared necessary.

Because the data research measures impact in relation to the control area, it is necessary that this latter area be tested in some manner for overall comparability. Ideally, something of the same land use composition, the same size and in about the same condition would be most suitable. A number of specific criteria are indicated below, showing the extent to which agreement with the project area is or is not fulfilled.

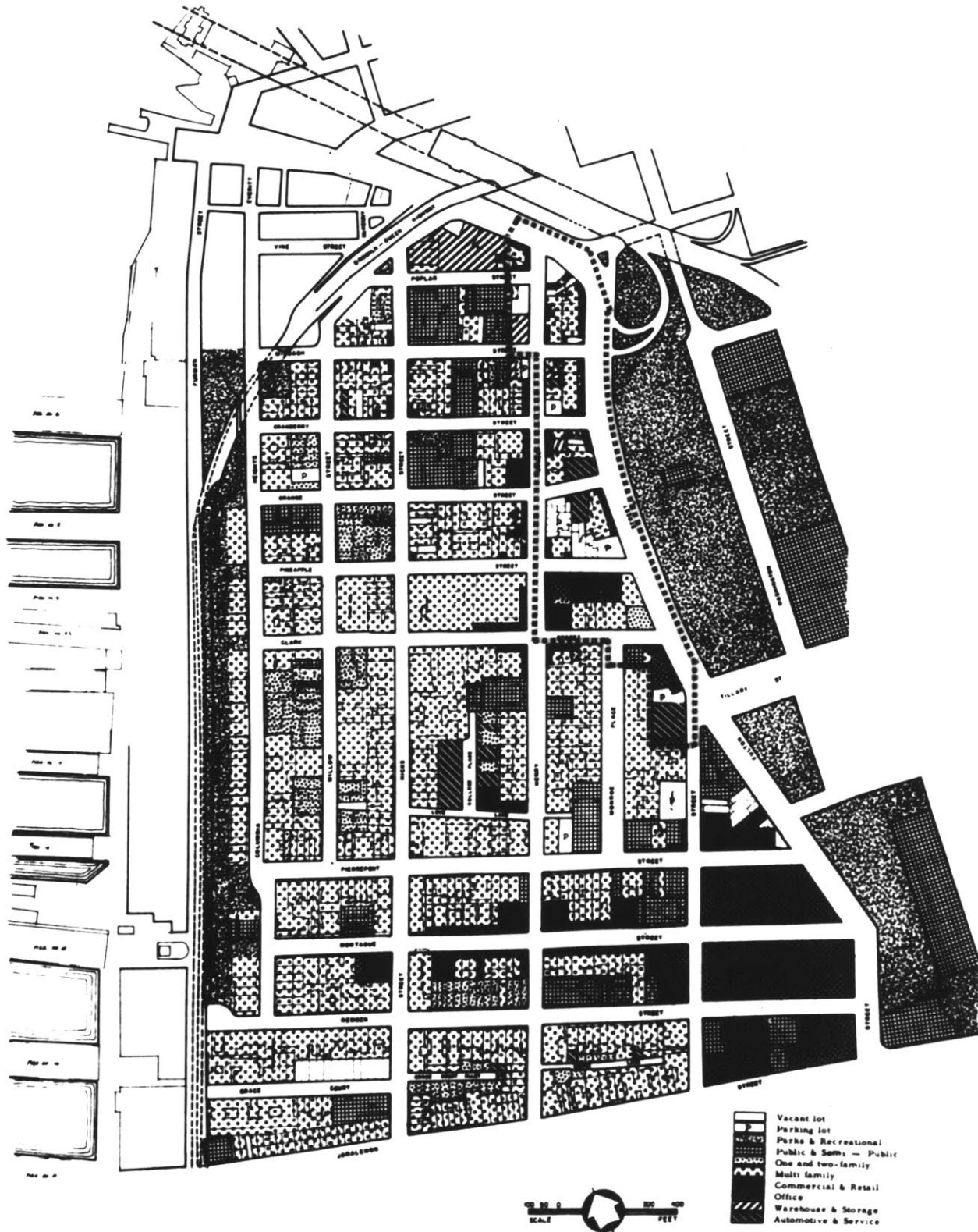
TABLE 2. CADMAN PLAZA CONTROL AREA COMPARABILITY: QUANTITATIVE

	<u>Net Acreage*</u>	<u>No. Developed Parcels, 1962</u>	<u>No. Vacant Parcels, 1962</u>	<u>Total Parcels</u>
PROJECT:	7	80	20	100
CONTROL:	10.5	111	5	116

*Including extended area

EXISTING LAND USE MAP 3

CADMAN PLAZA RENEWAL AREA



Although the project is predominantly of residential development, its visible character is that of a retail shopping area. This is owing to the numerous ground floor shops which spread throughout the area. Both Henry and Fulton Streets are extensively lined with shops. About 75% of the area's net acreage is in residential use, and 25% non-residential. Building types are generally of two to four story row house and tenement structures. A number of these have been torn down for parking lots.

Virtually the same character of development carries over into the control area along the Henry Street and Clark Street frontages adjoining both sides of the project. Beyond the adjoining frontage, however, land use composition differs in that a preponderance of residential development is found. The exceptions regarding public and semi-public uses have already been noted. In addition, the control area block bounded by Pineapple and Clark Streets contains a large hotel which has been excluded. Only ground floor retail use in this hotel has been accounted for in the data.

In general, the comparability of the western tier of control blocks from north to south is regarded as reasonably favorable despite the differences noted. The two southern control blocks do not, however, testify to such ready comparability. This is mainly owing to

commercial uses which do not exist to any degree along both Monroe Place and along Henry Street south of Clark Street. The quality of housing also improves markedly along these two streets. A few ten story apartment buildings are concentrated along these streets. Nevertheless, it appeared essential that all of block #238 be included as part of the control area because of the intimate involvement of this block with the threat of project extension. It was for this reason that the adjoining control block #237 was also included. Initially, the data summation for this latter block was kept separate from the rest of the control data. No bias or distortion in the data was evident, and totals were combined since this proved expedient by adding emphasis to identical trends.

Comparability of the control area is further demonstrated by housing condition and rental data reported by the 1960 census. Table 3 on the following page indicates that 66% of housing units in the project area were rated as sound, compared with 65% sound housing in the main portion of the control area west of Henry Street. In like manner, average rentals in project area dwellings ran at \$65, compared to \$68 in the control area.

TABLE 3. CADMAN PLAZA CONTROL AREA COMPARABILITY: QUALITATIVE

Census Block #	Total Population	Total H. U.	Sound # %	Deteriorating # %	Dilapidated # %	Average Rent
P 1 - 1 ^b	122	48	30	18	0	\$56
R 1 - 5	133	33	16	17	0	74
O 1 - 6	75	35	3	24	8	53
J 1 - 13	103	67	38	16	13	67
E 1 - 14	122	80	45	19	16	67
C 5 - 1	<u>295</u>	<u>151</u>	<u>142</u>	<u>1</u>	<u>8</u>	<u>72</u>
T	850	414	274 66%	95 23%	45 11%	\$65
C ^e 1 - 4 ^c	73	20	4	8	8	\$68
O 1 - 7	367	162	13	104	45	56
N 1 - 12	264	172	98	41	33	67
T 1 - 15	<u>535</u>	<u>337</u>	<u>337</u>	<u>-</u>	<u>-</u>	<u>82</u>
R	1239	691	452 65%	153 22%	86 13%	\$68
O						
L 5 - 5 ^d	<u>783</u>	<u>484</u>	<u>484</u>	<u>0</u>	<u>0</u>	<u>\$98</u>
ALL	<u>2022</u>	<u>1175</u>	<u>936 80%</u>	<u>153 13%</u>	<u>86 7%</u>	<u>\$75</u>

NOTES:

- a. Equivalent City Tax Block numbers reading from top down:
(Project:) 207, 212, 217, 222, 227, 232; (Control:) 211,
216, 221, 226, 237.
- b. All of Block 207 counted as Project Area since only one 5 story
tenement is in the Control portion.
- c. All of Block 1 - 4 counted as Control since the Project part
contains no housing.
- d. Block 5 - 5, or 237 treated separately as discussed in text,
page 27 and 28.
- e. Block 238 excluded altogether because of split by boundary.

SOURCE: 1960 Census of Housing Block Statistics

B. PROPERTY IMPROVEMENT AND NEW CONSTRUCTION ACTIVITY

A determination of private property improvement and new construction activity relied upon building permit data for the time span January, 1950 to mid November 1962. This embraces about seven years prior to project designation in November of 1956, and approximately six years thereafter. Condemnation occurred in December, 1962, which places the data one month short of that event.

3. Property Improvements Trend.

As indicated in Bar Chart 1, the observed trend in project area is one of drop off in activity subsequent to project announcement in late 1956, while the trend in control area is one of increasing activity both before and after the cut-off date.

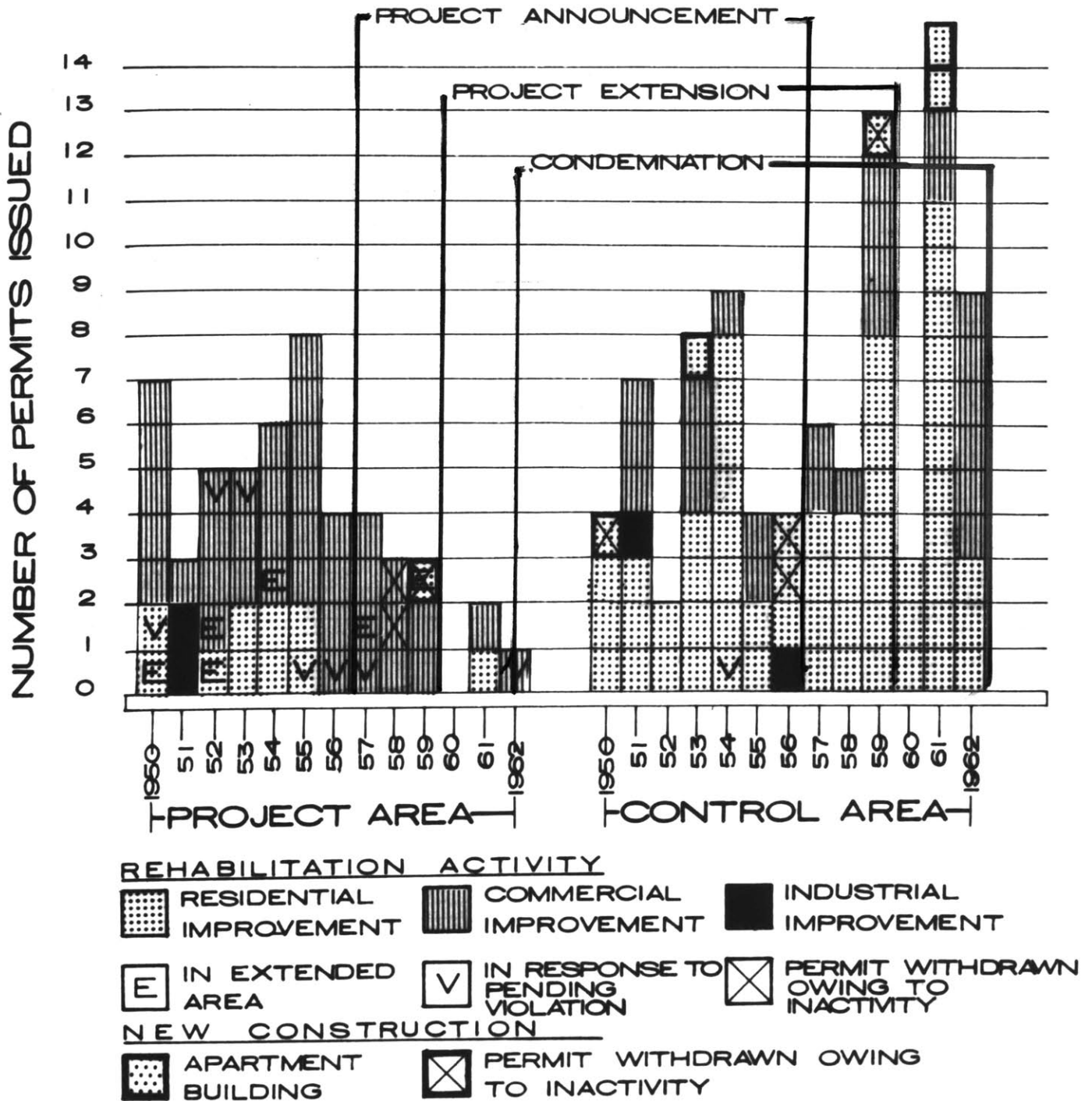
These opposing trends stand out with clarity despite an overall limitation in the data array owing to the project area's small size (7 acres). The greatest number of permits issued for any single year in the project area amounts to only eight. Thus the bar charts succeed in giving visual emphasis to trends which are not apparent through any simple tabular listing of permits. This limitation is overcome to some extent in Bar Chart 2 showing dollar value of improvements.

IMPROVEMENT AND NEW CONSTRUCTION ACTIVITY

-31-

CHART 1

CADMAN PLAZA RENEWAL AREA · JAN, 1950 — NOV. 15, 1962



SOURCE: DOCKET OF NEW CONSTRUCTION & ALTERATION PERMITS, MUNICIPAL BUILDING, BROOKLYN, NEW YORK.

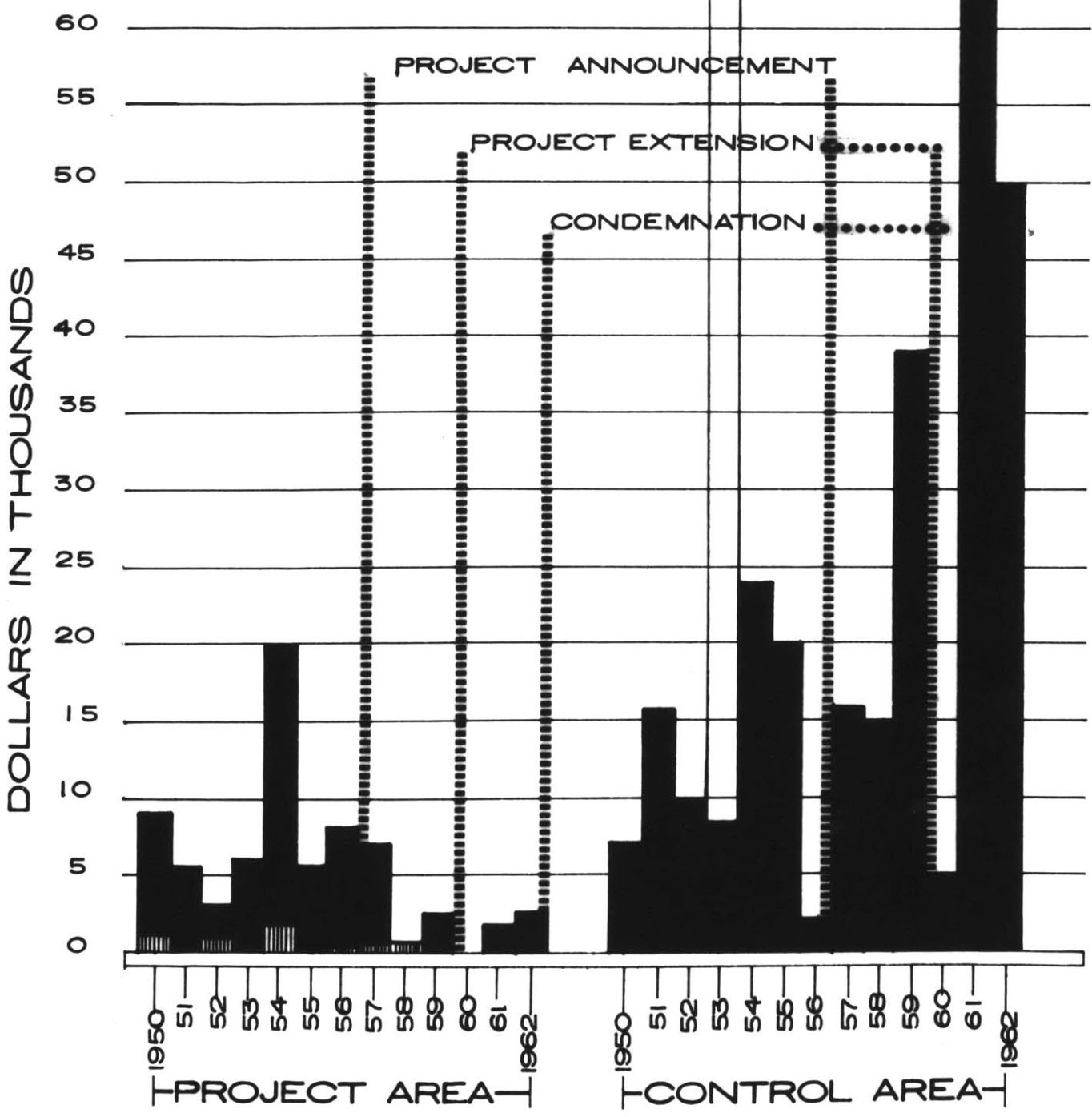
\$1,827,000

\$208,000

VALUE OF IMPROVEMENT AND NEW CONSTRUCTION ACTIVITY

CHART 2

CADMAN PLAZA RENEWAL AREA · JAN, 1950 — NOV 15, 1962

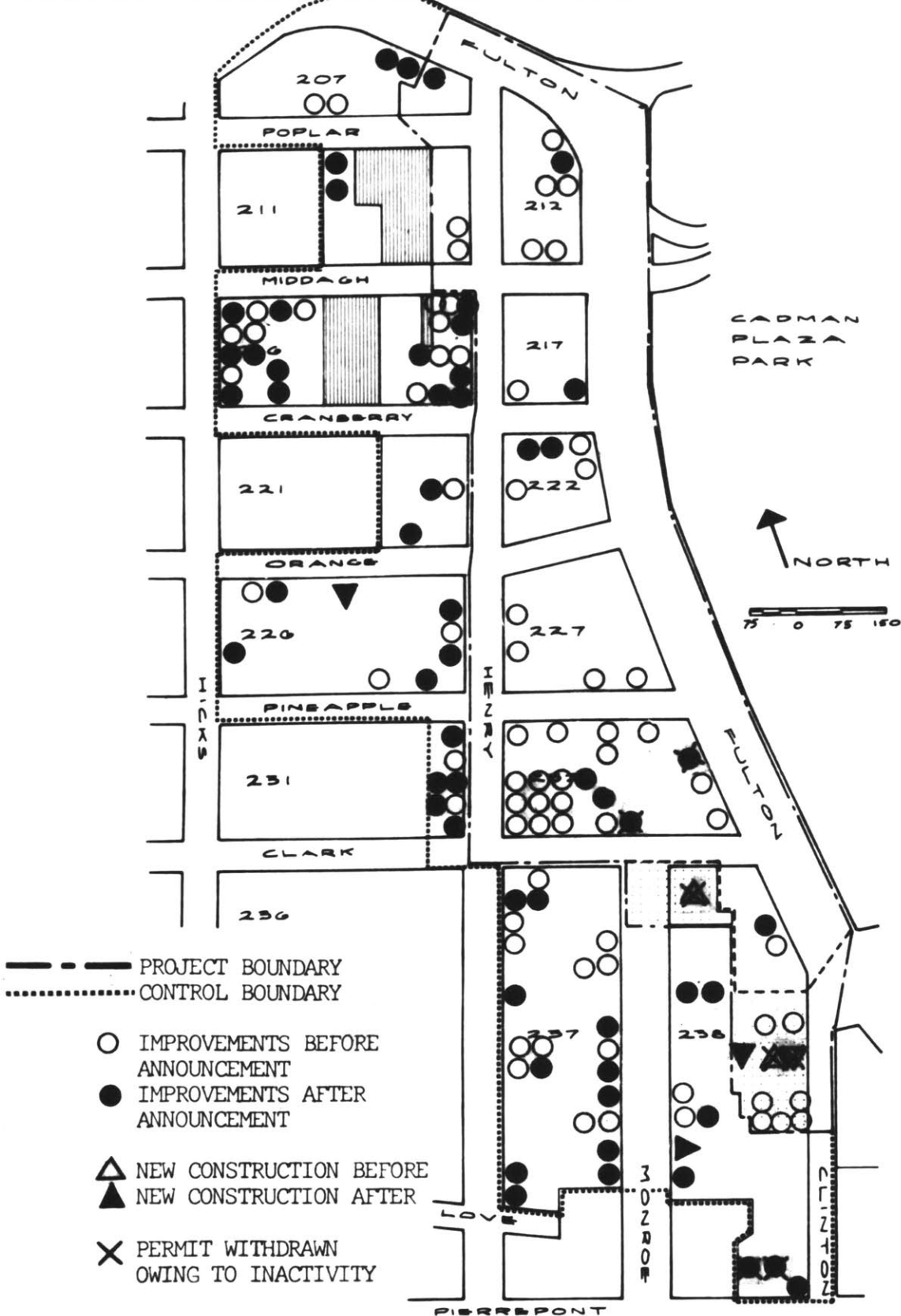


IMPROVEMENT INVESTMENT
 IMPROVEMENT EXTENDED AREA
 NEW CONSTRUCTION INVESTMENT

DISTRIBUTION OF IMPROVEMENTS AND NEW CONSTRUCTION

MAP 4

CADMAN PLAZA RENEWAL AREA



The enlarged magnitude of value expended in the control area as compared to the project area is also an indication of the quality and type of improvements taking place.

Typical or most frequent improvements within the project area consisted of commercial property improvements, while typical control area improvements involved the conversion of former single family and rooming houses into apartment houses. Table 4 describes in more detail the differences in type of improvements. In the project area, 60% of all improvements were commercial and 36% residential. In the control area, 69% of improvements were residential, while only 30% were commercial. A greater extent of commercial use in the project area as compared to the control area naturally accounts for an increased emphasis on commercial property improvements. Some significance may be attached to this distinction in the project area. However, for all practical purposes, the area indicates dormancy in respect to residential improvements. The store front-and-fixture improvements which make up the bulk of activity indicates a good level of vitality in the retail sector.

The diverging trends occurring after the cut-off date reveal an obvious level of impact: stagnation in the project area, and continuing resurgence in the control area.

TABLE 4. CADMAN PLAZA: DESCRIPTION OF IMPROVEMENTS

Description of project area improvements, 1950-1962

47 active Alteration and Building Notice permits were issued.

Percent assignment of permits by type of use:

- 36% residential improvements
- 60% commercial improvements
- 4% industrial improvements

Most typical residential improvements consisted of:

- General interior rehabilitation or alteration, 8.
- Mechanical equipment improvements, 4.
- Only two conversions of rooming houses are noted.

Most typical commercial improvements consisted of:

- Subdivision or alteration of floor space for new retail use, 7.
- Fixture and equipment replacement and interior improvements, 3.
- Exterior store front and other changes, 9.

Description of control area improvements, 1950-1962

98 active Alteration and Building Notice permits were issued.

Percent assignment of permits by type of use:

- 69% residential improvements
- 30% commercial improvements
- 2% industrial improvements

Most typical residential improvements consisted of:

- Conversions from lower to higher number dwelling units, 24.
- Conversions of rooming houses to dwelling units, 17.
- Mechanical equipment improvements, 9.
- General interior rehabilitation or alterations, 8.

TABLE 4. (CONTINUED) DESCRIPTION OF IMPROVEMENTS

Most typical commercial improvements consisted of:

- Exterior store front and other changes, 14.
- Fixture and equipment replacement and interior improvements, 9.
- Subdivision or alteration of floor space for new retail use, 5.

DATA SOURCE: Docket of Building Notices and Docket of Alterations, Municipal Building, Brooklyn, New York City.

Explanations for any year to year fluctuation in either the project or control area response must be undertaken with caution. Considerable documentation was uncovered to explain why the control area should have witnessed two low spells of activity, each coinciding with the project announcement and the project extension periods, respectively. While the initial drop occurring in 1955 may be open to question, the succeeding drop in 1960 is clearly linked to the announcement of a possible large scale project expansion which more than once threatened to engulf the control area. Extensive local newspaper coverage gave wide publicity to this.

A southward extension of the project did occur in 1960 after a period of uncertainty as to just how far it would go. A northwest extension during the same year threatened to absorb four entire

blocks of the control area, although this did not materialize.²

Yet the threatened impact of possible project expansion was a broad one involving about 90% of the control area and covering a time span of several months uncertainty during 1960. The resulting drop in improvement activity for 1960 affords a somewhat vivid register of response to official renewal announcements.

4. New Construction Trend

Building permit data for new construction has been summarized along with the improvement data, on Bar Charts 1 and 2. No new construction is revealed in the project area during the six year interval covered before project announcement. Note, however, that demolition for ten parcels took place. These were for parking lots.

A nominal amount of new construction took place in the control area during the 10 year period; one apartment house before and two apartment houses after project inception. This resulted in a net gain of 230 housing units and an estimated investment of \$1,950,000. In view of the area's limited size and fully developed character, this construction cannot be regarded as altogether insignificant. New construction entailed the demolition of existing lower density housing.

2. See Brooklyn Heights Press, 6-9-1960 and 6-16-1960 issues. The four northerly-most blocks were clearly signaled out by being shown on a map.

An abortive attempt to construct an apartment on a site which was subsequently absorbed by the project area is also reported. The site in question is church property on the corner of Clark and Monroe containing two vacated structures -- a church along with its town house vestry. A building permit was issued for the church site in December 1959 shortly before extension of the project in February of 1960. The circumstances surrounding this proposed apartment on the church site were somewhat involved, and need no detailing here.

Suffice it to say that the contemplated construction of this apartment building, and the three new buildings within the control area, provides an indication of the vitality bearing down upon the Brooklyn Heights area. Concensus of opinion has it that private enterprise would have long since moved into the project area seeking out new construction sites.³ This probably was not the case in 1956, but the ensuing years have brought with it an increased temp in part triggered by a rush to file building permits before the effective date of New York City's more restrictive zoning ordinance.

3. See, for example, headline article in 1-25-1962 issue of Brooklyn Heights Press: "'Banker Tells Realtors Heights will be Rebuilt': A Brooklyn banker predicted last week that within 'two or three years' Brooklyn Heights would be 'rebuilt by private enterprise, which would erect apartment houses on the prime merchandise west of Cadman Plaza'".

TABLE 5. CADMAN PLAZA: DESCRIPTION OF NEW CONSTRUCTION

Description of new construction in project area, 1950-1960:

None.

Description of new construction in control area, 1950-1960:

1 six story, 37 d.u. apartment building, 1953, \$200,000.

1 six story, 40 d.u. apartment building, 1961, \$250,000.

1 eleven story, 153 d.u. apartment building, 1961, \$1,500,000.

DATA SOURCE: Docket of Building Notices, Municipal Building,
Brooklyn, New York City

C. OCCUPANCY DETERMINATION

5. Occupancy in Housing

The determination of what effect prolonged planning may have had upon occupancy in dwelling space relied upon the 1960 Census of Housing Block Statistics, and a December 1962 "window shade" survey. Such an approach may have its limitations owing mainly to the time when the 1960 census was taken, but a more timely data source was lacking. Several alternative data sources were considered but rejected because of possible data bias. City Directories, used in the Pearl Street Project research, were unavailable for Brooklyn.

The April 1, 1960 Census of Housing was, nevertheless, judged as sufficiently useful because the census was conducted well beyond the mid-date between project announcement and condemnation. 42 months of time had elapsed since project announcement up to April 1960, and 33 months since the survey date prior to condemnation. This leaves somewhat under three years without a comprehensive check on possible occupancy changes.

The Census reported a total of 414 housing units with 12 vacancies in the project area. A total of 1175 units with 22 vacancies were reported for the control area. This accounts for a 2.9% vacancy rate in the project and a 1.9% rate in the control area. The borough-wide vacancy rate is reported as 3%.

TABLE 6. CADMAN PLAZA: VACANCIES IN HOUSING UNITS AS OF 1960

	<u>Block #</u>	<u>Housing Units</u>	<u>Average Rent</u>	<u>Vacant H.U.</u>	<u>%Vacant</u>
	207	48	\$56	3	6.3
	212	33	74	0	0
PROJECT	217	35	53	1	2.9
	222	67	67	2	3.0
AREA	227	80	67	3	3.8
	<u>232</u>	<u>151</u>	<u>72</u>	<u>3</u>	<u>2.0</u>
		414	65	12	2.9
	<u>Block #</u>	<u>Housing Units</u>	<u>Average Rent</u>	<u>Vacant H.U.</u>	<u>%Vacant</u>
	211	20	\$68	1	5.0
	216	162	56	6	3.7
CONTROL	221	172	67	4	2.3
	226	337	82	2	1.0
AREA	<u>237</u>	<u>484</u>	<u>98</u>	<u>9</u>	<u>1.9</u>
		1175	75	22	1.9

SOURCE: 1960 Census of Housing, Block Statistics for Brooklyn.

The use of Census Block Statistics was limited by some lack of correlation with project boundaries. The following adjustments were made:

- a. All of block 207 at the project's northern end was assigned as a project block since only one 5 story tenement building exists outside of the project portion. Six tenements fall within the project portion, with the majority of land outside the project being devoted to industrial use.

b. All of block 211 was assigned as a control block since the project portion contains no housing.

c. Block 238 at the south end is split by the project boundary. This block was discounted altogether because any adjustment in the census data would prove to be arbitrary.

The window shade survey in December of 1962 merely consisted of a close look at all buildings for possible signs of vacancies. Activity within both project and control areas appeared about the same. While these observations are not capable of systematic analysis, they nevertheless are pertinent. Any suggestion or image of a "ghost town" housing exodus in the project area was lacking.

As for the census findings, the reported difference in occupancy rates of 2.9% and 1.9% for project and control areas is not considered critical. The conclusion is therefore warranted that the event of project planning has exerted no discernible impact on occupancy levels. Although as percentage figures a distinct edge may be made of a 1% difference, this difference is not compelling when whole numbers are examined.

Some difference in the level of occupancy in favor of the control area can be expected to exist. This difference would logically reflect an enhanced competitive position of housing within the control area owing to better condition. Such a trend is, in fact, confirmed by

the occupancy rates and average rents reported for each block in the control area in a north to south progression. Least desirable housing conditions prevail in the north, and more desirable conditions in the south. (Table #3) Occupancy and rents are progressively lower in the northern blocks, and higher in the southern blocks. It is, in fact, surprising that higher vacancy rates are not found in both project and control areas. In Housing Markets and Public Policy, Grigsby reports that nationally about one-fifth of all substandard units are not occupied.⁴

In short, a substantial deviation in occupancy levels would be regarded as possibly critical, whereas a nominal deviation is understandable in terms of everyday market forces. It must be concluded that the threat of eminent domain closing in on this project has had no effect on housing occupancy.

6. Occupancy in Commercial and Industrial Space.

Shortly before condemnation during November, 1962, all space was surveyed. This involved a count of all shops in both control and project areas. Vacancies occurring in the control area were considerably ahead of vacancies in the project area...20% compared to 6.2%. Although a survey coinciding with the date of project announcement is lacking, such an omission appears to be beside the point.

4. Grigsby, Housing Markets & Public Policy, op, cit.,, p. 261.

TABLE 7. RETAIL SPACE SURVEY, NOVEMBER 1962

<u>Project Area</u>	<u>Control Area</u>
Number of shops: 96	Number of shops: 55
Number vacant: 6	Number vacant: 11
Percent vacant: 6.2%	Percent vacant: 20%

The pattern of existing vacancies was of an even distribution and did not appear to reflect any area-wide concentration at one point owing to possible differences in locational advantage.⁵ The majority of commercial uses consist of ground floor space with dwelling unit accommodations above.

Vacant second floor office space was noted in the project area and estimated at approximately 25%. Only a limited amount of office space exists in the project area. Since the control area contains no comparable second floor space, a random survey of second floor space elsewhere in the adjoining neighborhood disclosed equally abundant vacancies.⁶ This latter space may be regarded as having locational advantages over the project area since it is nearer to the C.B.D. area.

5. The entire project area is in either commercial zoning or heavily infiltrated with commercial uses not so zoned. The Henry Street frontage of the control area is also zoned for commercial, ending at Clark Street.

6. Corner of Clinton Street and Joralemon Street, and 3 or 4 examples along Montague Street. About the same vacancies can be presently observed at the time of this writing.

An over-supply of second floor office in two story buildings is apparent throughout the area.

Industrial space is situated in block 207 and in the project portion of block 211 at the northern extremity of the project and control areas. The majority of these industrial buildings are in an advanced state of decay and obsolescence. Vacancies are the rule of the day and doubtless have been so for many years.

The excess of control area vacancies over project area vacancies in commercial space effectively dispels any suggestion that prolonged renewal planning activity has had any adverse impact on occupancy.

D. REAL ESTATE MARKET ACTIVITY

7. Real Estate Transfers

The source used to determine real estate transactions was the Brooklyn Real Estate Register,⁷ a subscription service publication appearing in monthly supplements. All transfers for the project and control areas since 1950 are summarized on the accompanying bar chart and spatial distribution spot map.

7. Brooklyn Real Estate Register, 356 Fulton Street, Brooklyn, New York.

Transactions within the project area witnessed an abrupt decline shortly after project announcement. Only two bonafide transfers are recorded.

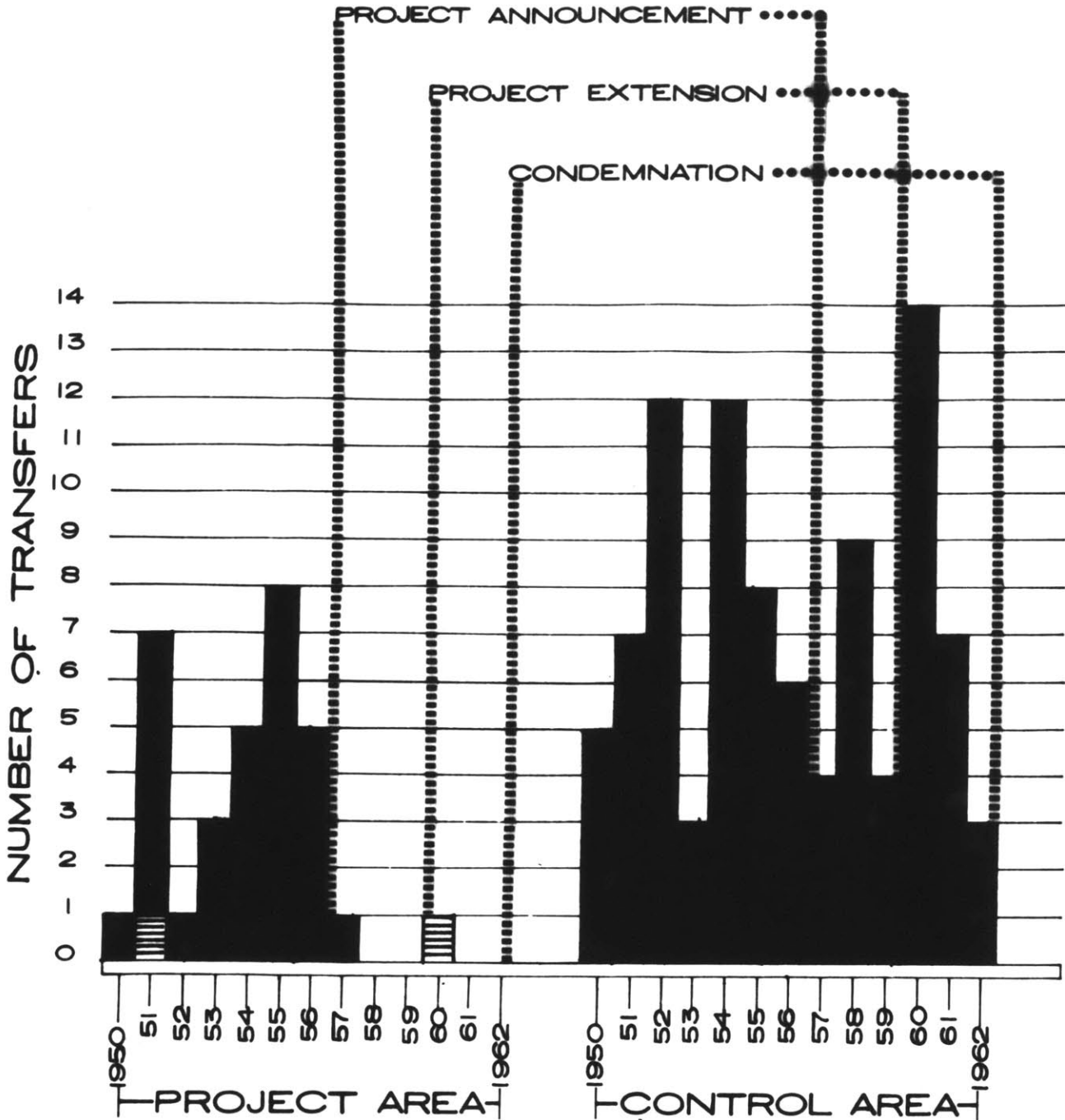
Transfers within the control area do not reveal any appreciable influence. Observe that a high peak is reached in the control area for the year 1960 in Bar Chart 3 showing real estate transfers. At first glance, this may suggest panic selling coinciding with the threat of project expansion voiced in 1960. This does not, however, bear support in a study of the spatial distribution of transfers for that year. The pattern is fairly even, and several properties changed hands in those blocks least affected by the threat (blocks 237 and 226).

The two transfers taking place within the project area subsequent to project announcement warrant some qualification. The first one occurred in January, 1957 -- less than three months after project announcement. The property in question is located at the extremity of the northern boundary along Fulton Street in a block which is cut into by the project boundary. There may be reason to believe that some degree of unawareness existed owing both to close timing and the property's peculiar relation alongside the irregular tail-end of the northern boundary. The parcel in question has a five story tenement with a ground floor store.

BONAFIDE REAL ESTATE TRANSFERS

CADMAN PLAZA RENEWAL AREA · JAN, 1950 - NOV 15, 1962

CHART 3



SOURCE: BROOKLYN REAL ESTATE REGISTER



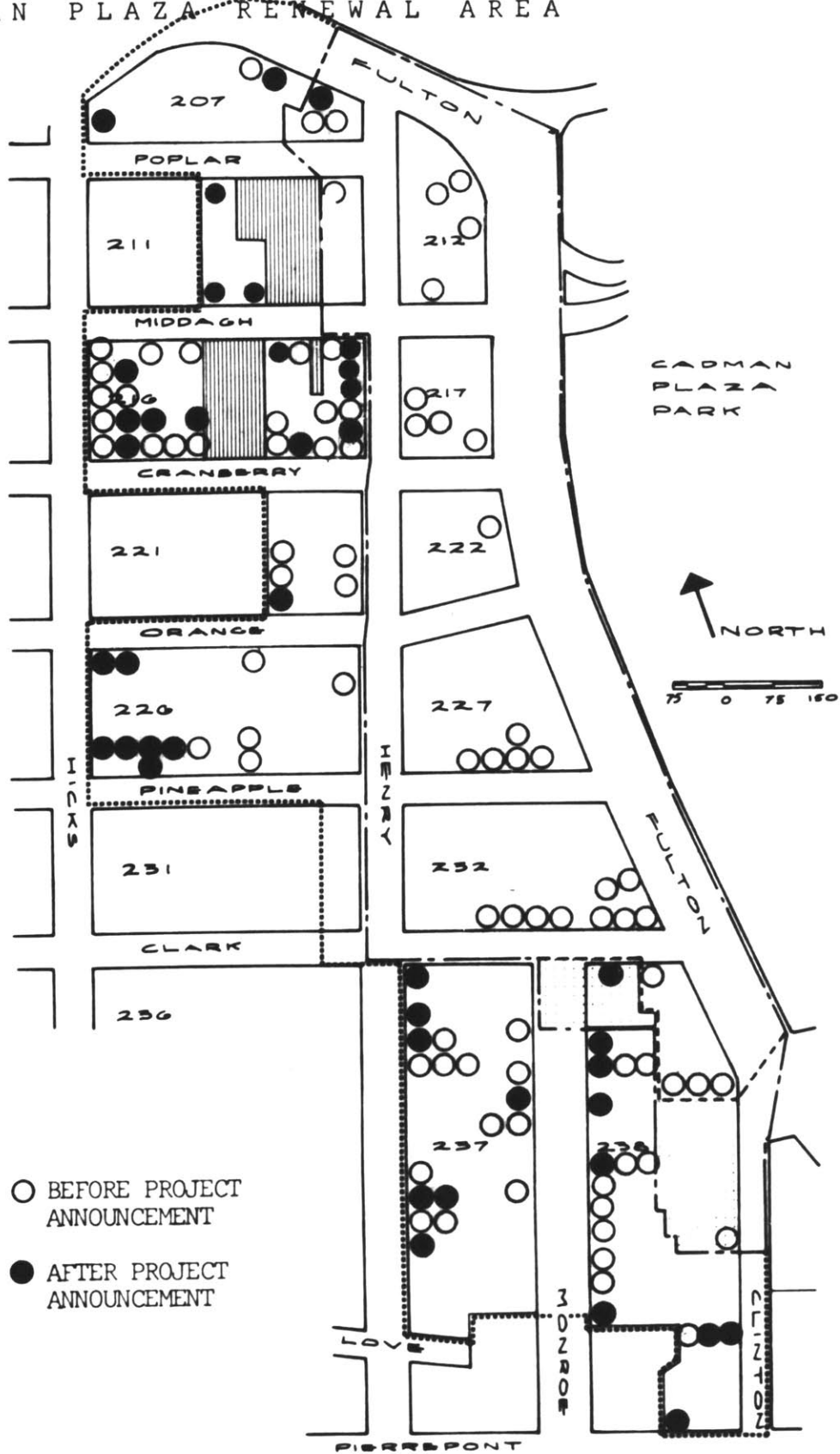
TRANSFER



TRANSFER IN EXTENDED PROJECT AREA

DISTRIBUTION OF REAL ESTATE TRANSFERS

CADMAN PLAZA RENEWAL AREA



It had sold on previous occasions in 1954 and again in early 1956. Each transaction showed an appreciation in value, as recorded in the Register. The figures bear no suggestion of any possible irregularity in handling.

The second project transaction occurred in March of 1960, involving the fire damaged church at corner Monroe Place and Clark Street. It will be recalled that a building permit was issued for this site shortly before its inclusion within the project. The transfer, however, appears to have taken place shortly after approval of the project extension as confirmed by the Housing and Redevelopment Board during the second week of February, 1960. The property is reported as having been on the market for a period of years with the present owners being unable to come to terms with earlier offers.⁸ The 12th hour transaction, timed so close to project expansion, may lend itself to interpretation as a questionable transaction much in favor of the new owner. However, both the unique nature of this property and the circumstances surrounding its eventual absorption by the project make the situation so atypical that no general concern over irregularity can be made an issue of.

8. As reported by Brooklyn Heights Press, 10-22-1959 issue. It had been hoped by local residents that some organization would be interested in preserving this architectural masterpiece dating from 1848. See also 11-12-1959 and 1-7-1960 issues for an account of the church dealings.

The special circumstances attaching to these two transfers in the project after 1956 therefore indicates a finding of virtually complete standstill in activity. It can be concluded that the promise of future condemnation has exerted an almost complete inhibiting influence on the volume of real estate transfer activity normally taking place.

IV. IMPACT FINDINGS
CASE II: PEARL STREET

A. QUALIFYING AND DESCRIPTIVE DATA

1. Chronology of Events and Land Uses.

The Pearl Street Renewal Area consists of a four block, or 23 acre site adjoining Elizabeth's Central Business District and its Civic Center. The Elizabeth River (better described as a brook at this point) separates the area from the C.B.D., thereby providing a sharp land use break between the commercial development on the north side and residential development on the south side. In locational facets this project is similar to the Cadman Plaza project in its proximity to downtown.

Existing development in the area consists largely of 1, 2 and 3 family detached housing. Several industrial and corner retail shops are scattered throughout this residential background. A hospital flanks the project's western boundary with a few of its accessory facilities located within the project. Overall land use is 80% residential and 20% non-residential.

Initial renewal planning steps date back to 1957 with first public announcement in March of that year. The cut-off date used for data analysis is the beginning of 1957, rather than 1959 when the area was officially designated after some initial delay. A chronology of key events relating to the project's history is outlined in Table 8.

TABLE 8. CHRONOLOGY OF EVENTS, PEARL STREET RENEWAL AREA, R-23

- 3 - - 1957 First public announcement.
- 9 - - 1957 Survey and Planning Application approved by U.R.A.
- 10 - - 1957 First survey of conditions on blight findings.
- 8 - - 1958 Survey of conditions by consultants retained by local property owners group disputes findings of official October 1957 survey.
- 6 - 9 - 1959 Public Hearing and first determination of blight by Planning Board. Board approves 6-23-1959.
- 6 - - 1959 Loan and Grant Part I Application approved.
- 7 - 9 - 1959 Property Owners Association institutes legal action attacking blight determination.
- 3 - - 1962 Second survey of conditions on blight findings.
- 5 - - 1962 Public hearing on second survey findings.
- 11 - 28 - 1962 Second Declaration of Blight by Planning Board, correcting earlier deficiencies in findings.
- 12 - 26 - 1962 City Council approves blight determination.
- 1 - 20 - 1964 Supreme Court of New Jersey decides in favor of municipality; Property Owners Association lose their case.

ORIENTATION MAP

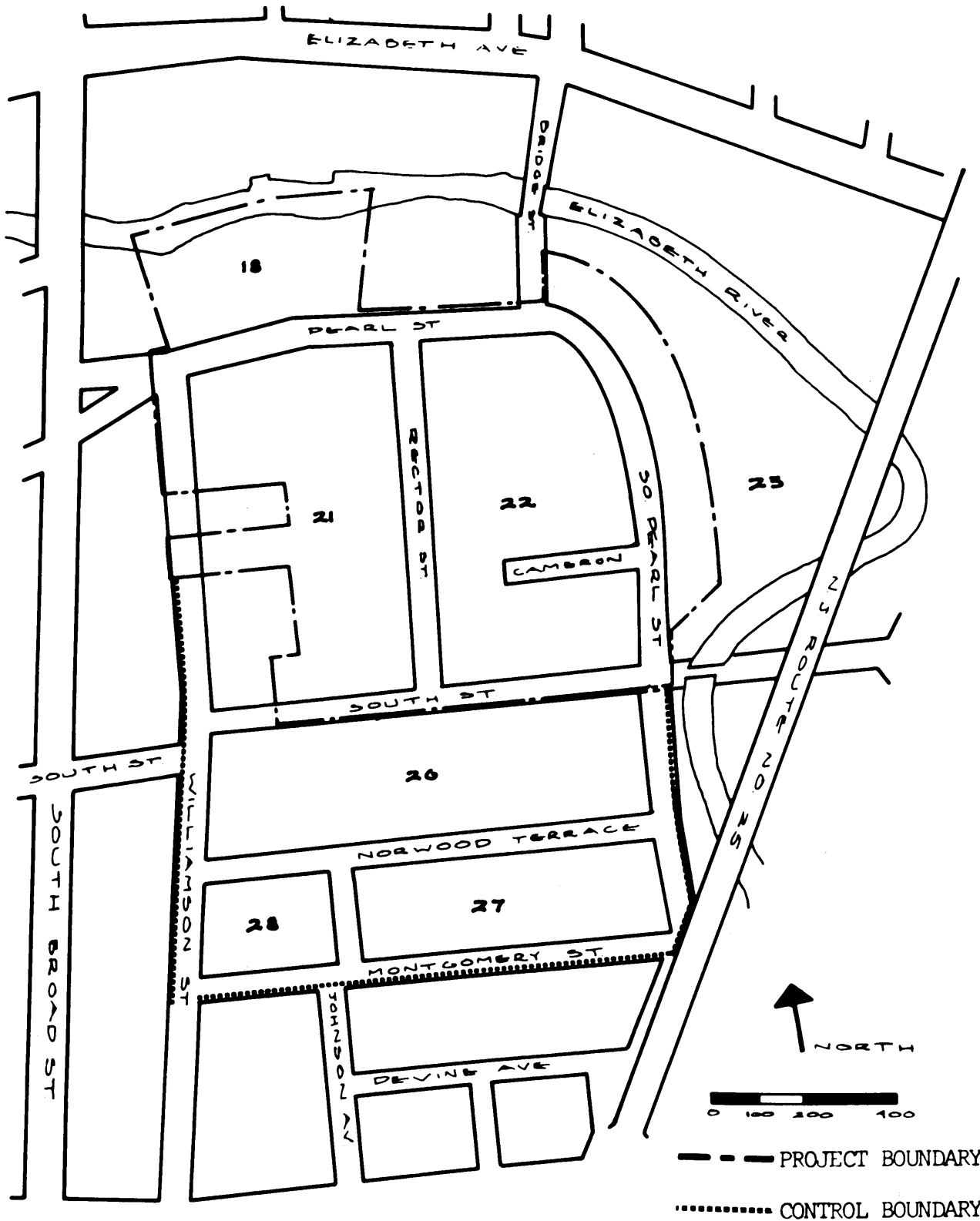
MAP 6



BOUNDARY MAP

MAP 7

PEARL STREET RENEWAL AREA



2. Comparability of the Control Area.

The control area uses three blocks adjoining to the south of the project (see accompanying map). Comparability is established by the following data:

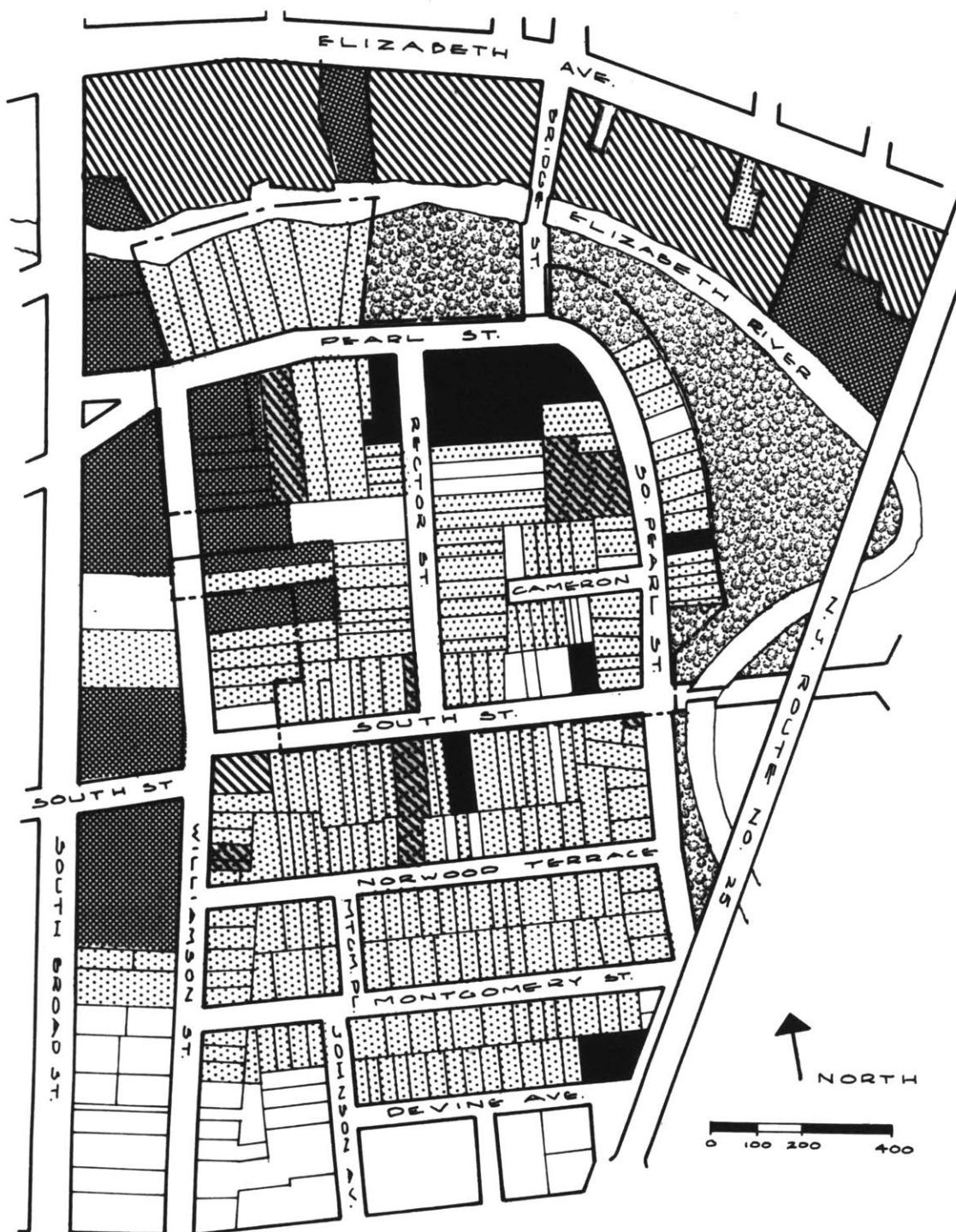
TABLE 9. PEARL STREET CONTROL AREA COMPARABILITY: QUANTITATIVE.

	<u>Net Acreage</u>	<u>No. Developed Parcels, 1962</u>	<u>No. Vacant Parcels, 1962</u>	<u>Total Parcels</u>
PROJECT:	18.0	80	16	96
CONTROL:	15.5	89	4	93

The control block directly adjacent to the project appears identical in land use composition with the project area. Several scattered industrial and commercial uses invade the block. To all external appearances, the same age and type of detached housing exists. The two southerly control blocks are less comparable, owing mainly to the lack of intruding industrial uses and a housing stock which is not quite as old. Nevertheless, overall similarities were considered to outweigh any dissimilarities that might seriously affect their role as part of the control area.

EXISTING LAND USE MAP 8

PEARL STREET RENEWAL AREA



VACANT
PARK
PUBLIC

INDUSTRIAL
RESIDENTIAL
COMMERCIAL
RESIDENTIAL-COMMERCIAL

Comparability of the entire control area is further shown by housing condition and rental data as reported by the 1960 Census. Table 10 indicates that 92% of housing in both project and control areas were rated as sound, while 8% in each as deteriorating. Average rentals in project dwellings ran at \$60 a month compared to \$64 in the control area.

TABLE 10. PEARL STREET CONTROL AREA COMPARABILITY: QUALITATIVE

	<u>Census Block #</u>	<u>Total Population</u>	<u>Total H.U.</u>	<u>Sound #</u>	<u>%</u>	<u>Deteriorating #</u>	<u>%</u>	<u>Dilapidated #</u>	<u>%</u>	<u>Average Rent</u>
P	8 - 18	53	16	16		0		0		\$61
R										
O	8 - 21*	172	50	48		2		0		67
J										
E	8 - 22	153	43	38		5		0		58
C										
T	8 - 23	<u>58</u>	<u>17</u>	<u>14</u>		<u>3</u>		<u>0</u>		<u>53</u>
		436	126*	116	92%	10	8%	0	0	\$60
C										
O	8 - 26	241	76	70		6		0		72
N										
T	8 - 27	152	45	44		1		0		57
R										
O	8 - 28	<u>72</u>	<u>21</u>	<u>16</u>		<u>5</u>		<u>0</u>		<u>64</u>
L		465	142*	130		12		0		\$64

*9 H.U. in Block 8 - 21 are part of control area.

SOURCE: 1960 Census of Housing Block Statistics.

B. PROPERTY IMPROVEMENT AND NEW CONSTRUCTION ACTIVITY

Data for improvements and new construction relied upon building permit records, covering a time span from January, 1950 through December 1962. This established a trend of approximately eight years before project announcement during 1957 and five years thereafter.

3. Property Improvements Trend

The accompanying spot map and column charts summarize building permit data for the past decade. Approximately the same ups and downs in activity are found here as was experienced in the Cadman Plaza case study:

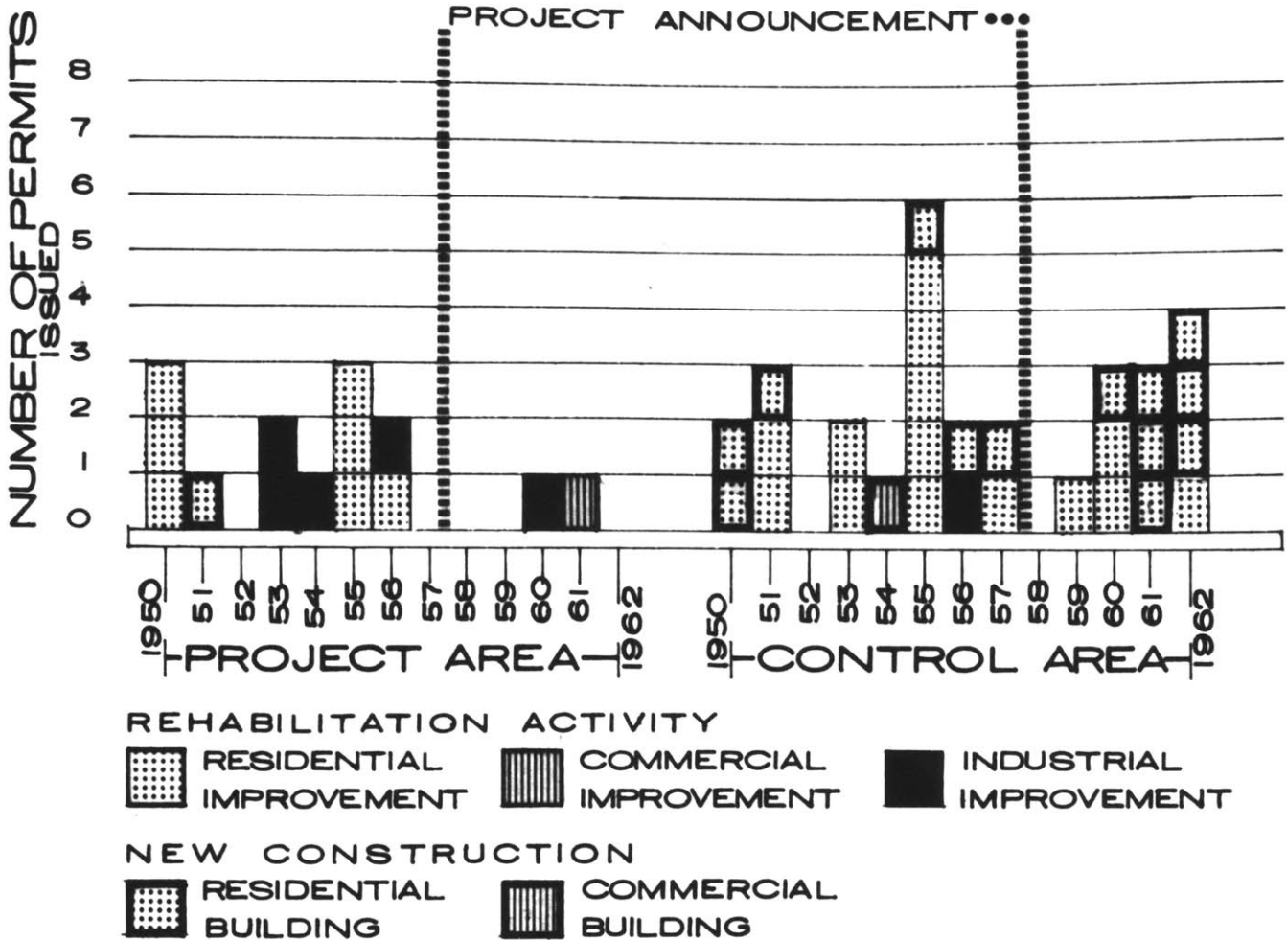
- A sustained level of improvements occurring in both project and control areas prior to project announcement.
- A curtailment of improvements in the project area subsequent to project announcement.
- A temporary drop in control area improvements during the period coinciding with project announcement.
- A continuance of improvement activity in the control area beyond the cut-off date.

Note that the data has the advantage of a direct numerical comparison because the number of parcels in the project area about equal those in the control area. While only eleven improvements are observed

IMPROVEMENT AND NEW CONSTRUCTION ACTIVITY

-59-
CHART **4**

PEARL STREET RENEWAL AREA · JAN, 1950 — DEC, 1962

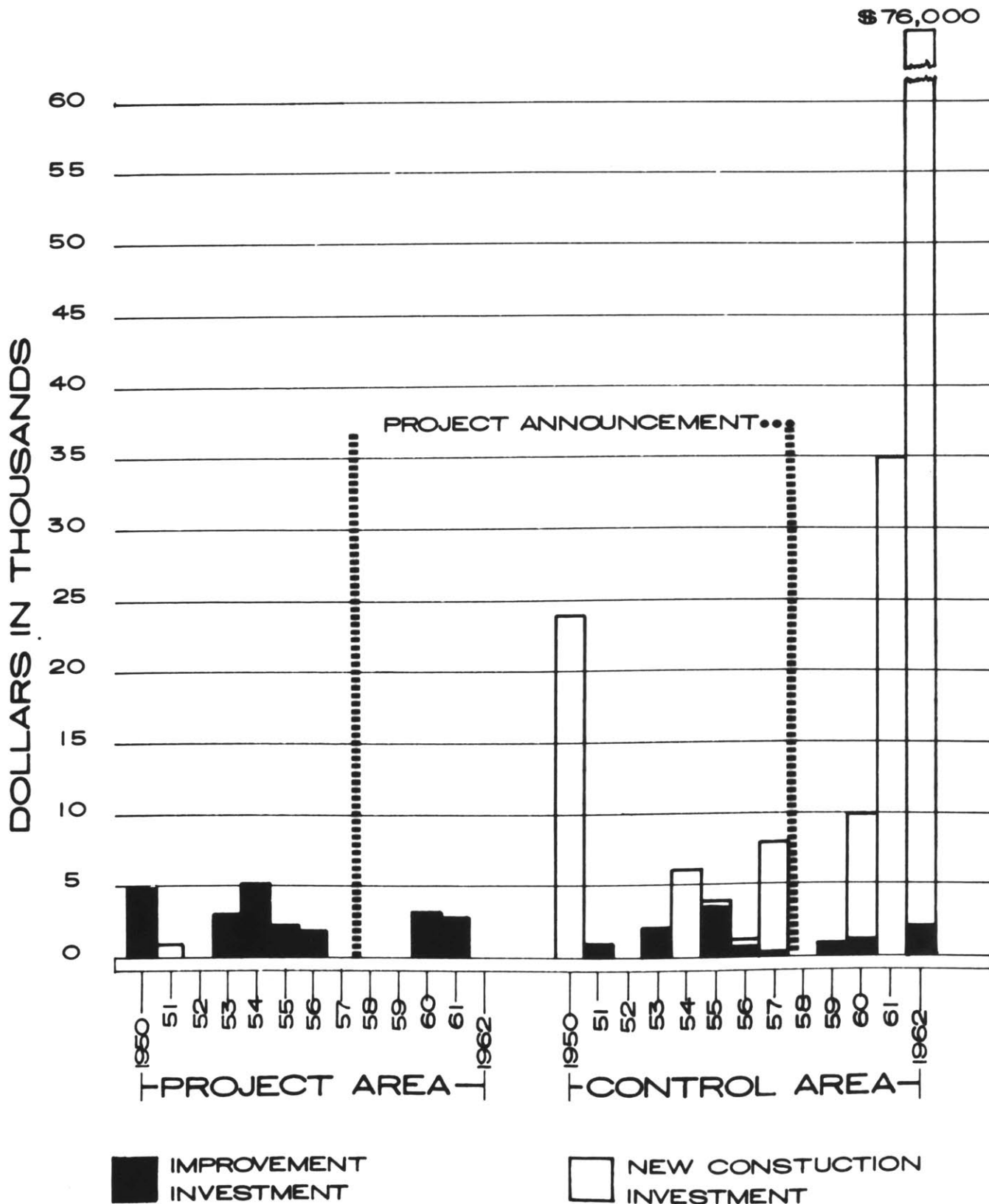


SOURCE: BUILDING PERMIT RECORDS, CITY HALL, ELIZABETH, N.J.

VALUE OF IMPROVEMENT AND NEW CONSTRUCTION ACTIVITY

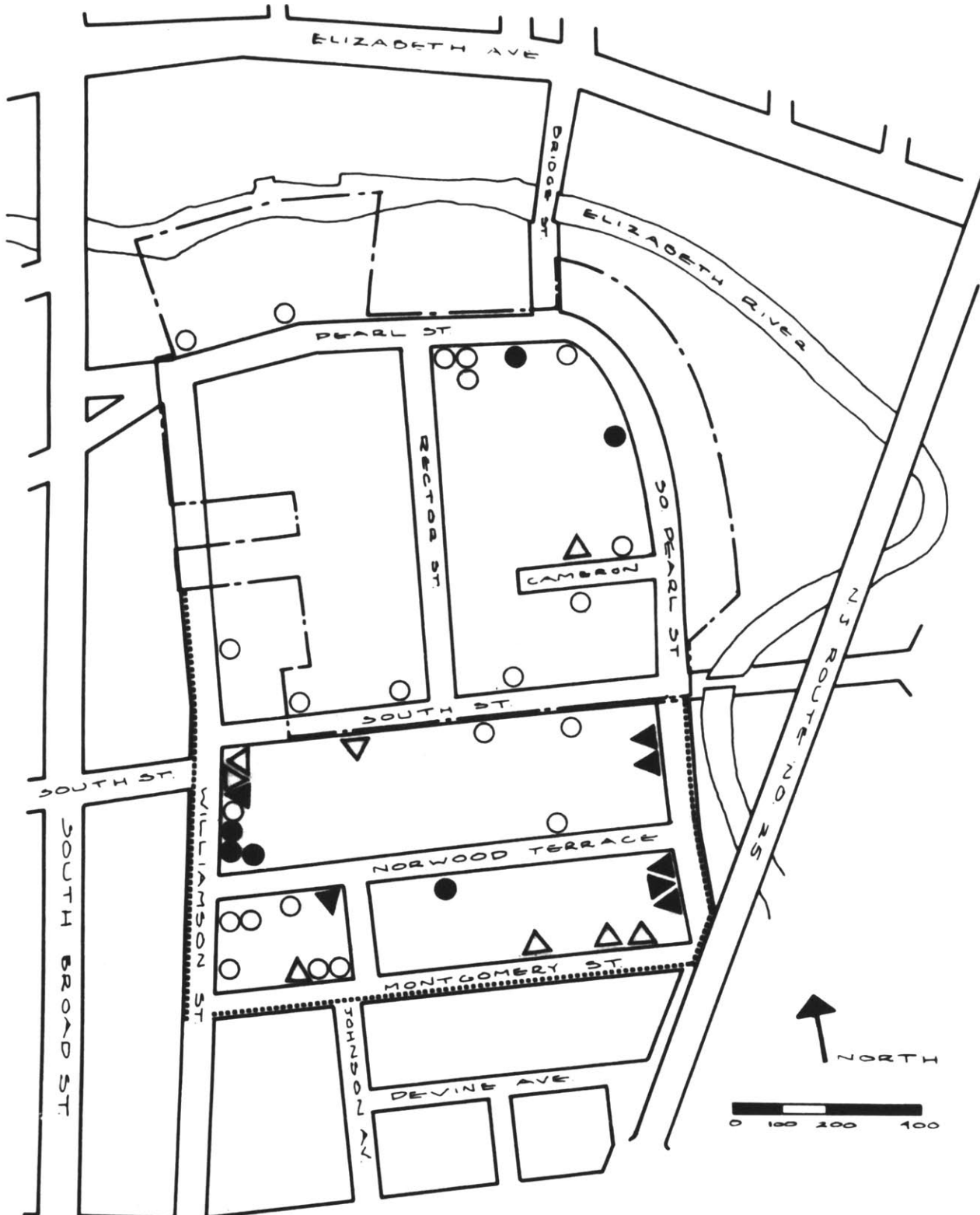
CHART 5

PEARL STREET RENEWAL AREA · JAN, 1950 — DEC, 1962



DISTRIBUTION OF NEW CONSTRUCTION AND IMPROVEMENTS

PEARL STREET RENEWAL AREA



○ IMPROVEMENTS BEFORE ANNOUNCEMENT
 ● IMPROVEMENTS AFTER ANNOUNCEMENT

△ NEW CONSTRUCTION BEFORE
 ▲ NEW CONSTRUCTION AFTER

in the project area prior to project inception, by coincidence eleven improvements are also recorded for the control area. Expressed in dollar value, the project area improvements during this eight year period amount to \$15,600, and the control area improvements to only \$7,300.

TABLE 11. PEARL STREET: DESCRIPTION OF IMPROVEMENTS

Description of Project Area Improvements, 1950,-1962

13 active Building Permits were issued.

Percent assignment of permits by type of use:

- 54% residential improvements.
- 38% commercial improvements
- 8% industrial improvements.

Residential improvements consisted of:

- 2 conversions to higher dwelling unit count
- 3 additions or alteration of space
- 2 general rehabilitation

Commercial-Industrial improvements consisted of:

- 4 additions or alteration of space
- 1 mechanical equipment replacement
- 1 general rehabilitation

(The two after project announcement improvements involved an addition for office space to a mechanic's garage (\$3,000) and a second story addition with remodeling of office space for a warehouse (\$2,500).

TABLE 11. (CONTINUED) DESCRIPTION OF IMPROVEMENTS

Description of Control Area Improvements, 1950 - 1962

15 active Building Permits were issued.

Percent assignment of permits by type of use:

- 93% residential improvements.
- 0% commercial improvements.
- 7% industrial improvements.

Residential improvements consisted of:

- 1 conversion to higher dwelling unit count
- 4 additions or alteration of space
- 8 general rehabilitation

Commercial-Industrial improvements consisted of:

- addition or alteration

DATA SOURCE: Building Permit Records, City Hall, Elizabeth, New Jersey

In short, the level of improvements may at first glance appear insignificant, but this can be qualified by pointing out that the project area data is dealing with a relatively small number of built-up parcels -- 64 all told. Of this total, 52 are residential. As such, the seven home improvements taking place during this eight year period reflect 13% of the existing housing stock. The comparable control area percent of home improvements during the same eight year period is also

13% -- applying ten improvements against a total stock of 75 built-up parcels. By this measure of comparison, it therefore becomes apparent that home improvements occurring in both areas during the eight year period were on an equal footing, and with a definite edge in favor of the project area in dollar value contrast. Any sluggishness or vitality that may be attributed to the project area by such a ratio of improvements applies as well to the control area.

4. New Construction Trend.

The contrast in new construction taking place in the control area differs sharply from the project area during the eight year interval preceding project announcement. Only one instance of new construction is reported for the project area -- a one-car garage in 1951. In turn, the control area reported 13 new structures during the entire 13 year period: 10 new houses, 1 retail building, and 3 private car garages built subsequent to house construction. (See Table 12). This represents an estimated investment of about \$160,000.00.

The causes for the differences in control area versus project area construction can be readily described. In the first place, it may be wondered why the project area did not exhibit an equal volume of new construction since vacant parcels at the start of 1950 outnumbered those available in the control area: 16 compared to 13. At the end of

the 12 year period, the project area still had 16 vacant lots while the control area had only 4. Close examination of the land use map (and, of course, field inspection) reveals that the majority of vacant parcels cluster around, or are within sight of the several scattered industrial uses. Since such uses do not intrude into the control area --with the exception of only the northernmost control block -- the same liability against new home construction did not exist. But note how three out of only four remaining vacant lots within the control area are in sight of those few industrial uses that do exist.

In sum, it cannot be said that project announcement has had any effect on ~~new~~ construction in the project area since no such construction had been taking place. By comparison, the control area exhibited a healthy level of filling-in vitality both before and after project announcement. The stagnation in the project area can be attributed to deficiencies inherent in its land use composition.

TABLE 12. PEARL STREET: DESCRIPTION OF NEW CONSTRUCTION

Description of new construction within project area, 1950 - 1962:

1 private garage

Description of new construction within control area, 1950 - 1962:

4 one dwelling unit houses

4 two dwelling unit houses

2 four dwelling unit houses

3 garages (constructed subsequent to new house construction)

1 retail ice cream store

NOTE: Improvements and new construction by the St. Elizabeth Hospital have been excluded from the data.

DATA SOURCE: Building Permit Records, City Hall, Elizabeth, New Jersey

C. OCCUPANCY DETERMINATION

5. Occupancy in Housing

The determination of occupancy in housing relied upon two data sources: Price & Lee City Directories and the 1960 Census of Housing Block Statistics. The canvas of city directories is the more meaningful of the two sources in that bench mark dates were used: 1953, 1959, (1961) and 1963. All name listings for the houses under survey were transposed onto analysis sheets and then compared for omissions and reported vacancies.

As for the impact of project announcement and delay upon housing occupancy, the analysis of both data sources indicates that there has been no appreciable influence. The following table sums up changes in occupancy for the years 1953, 1959 and 1963. The 1959 date reflects occupancy before project announcement, and the 1963 year acts as a current measure of change.

TABLE 13. PEARL STREET: VACANCIES IN HOUSING UNITS, 1953 - 1963

	<u>1953</u>	<u>1959</u>	<u>1963</u>
P			
R Total Houses	76	76	76
O Total Dwelling Units	117	117	117
J No. Occupied Dwelling Units	112	110	108
E No. Vacant Dwelling Units	5	7	9
C No. Estimated Rental Units Avail.	42	42	42
T No. Estimated Vacant Rental Units	4	7	8, or 6.8%

TABLE 13. (CONTINUED) VACANCIES IN HOUSING UNITS

C	<u>1953</u>	<u>1959</u>	<u>1963</u>
O Total Houses	89	90	92
N Total Dwelling Units	156	157	160
T No. Occupied Dwelling Units.	136	145	151
R No. Vacant Dwelling Units	20	12	9
O No. Estimated Rental Units Avail.	66	66	68
L No. Estimated Rental Units Vacant	15	10	9, or 5.6%

SOURCE: Price & Lee City Directories

The Price & Lee listings do not distinguish between renter and owner occupied units. The estimate of renter units as shown was derived by counting all units above one in each building. Census reports indicate that approximately 60% of all available units are renter occupied, a somewhat higher figure which is presumably more accurate. The owner-tenant distinction is important to establish because tenants would presumably exhibit greater mobility under any duress or uncertainty created by the renewal plan.

The project area data discounts occupancy change occurring in 6 houses which were bought by the St. Elizabeth Hospital for expansion during the decade. Such discounting maintains a constant inventory of dwelling units against which change can be easily measured. Also, newly constructed houses in the control area during 1962 were discounted since the reported vacancies were assumed to result from an unfavorably short

time interval of market availability rather than any long term cause.

The 1960 Census of Housing Block Statistics for Elizabeth can be looked upon only as a general check on the accuracy of the Price & Lee canvas. The census survey follows too closely upon the heels of project announcement to afford any current estimate of effect owing to renewal plans. Statistics from the census source are shown in Table 14.

TABLE 14. PEARL STREET: VACANCIES IN HOUSING UNITS AS OF 1960.

	<u>Block #</u>	<u>Housing Units</u>	<u>Average Rent</u>	<u>Vacant H.U.</u>	<u>%Vacant</u>
PROJECT	8 - 18	16	\$61	0	0
	8 - 21*	50	67	0	0
	8 - 22	43	58	1	2
AREA	8 - 23	<u>17</u>	<u>53</u>	<u>0</u>	<u>0</u>
		126*	\$59.7	1	1%
CONTROL	8 - 26	76	72	1	1
	8 - 27	45	57	0	0
AREA	8 - 28	<u>21</u>	<u>64</u>	<u>1</u>	<u>4</u>
		142*	\$64	2	1%

*9 H. U. in Block 8 - 21 are part of control area.

SOURCE: 1960 Census of Housing Block Statistics.

The variations in nominal vacancies reported by both sources do not represent any serious conflict but complement each other. The 1963 Price & Lee vacancy levels of 6.8% in the project area, and 5.6% in the control area do not give rise to any cause for alarm. Here again, percentage levels must be used with caution because of the

smallness of absolute numbers. The 1960 census indicated a city-wide vacancy rate of 3%. As in the Cadman Plaza research, the determination of project impact upon housing occupancy is a negative one.

It may be argued that this low density area in Elizabeth is a somewhat unsuitable specimen for research, and that a higher density area would be more suitable. This notion, however, may be dismissed. In an area of predominantly two-family housing, "anonymity" of residents would be low as compared to a high density area. Word-of-mouth news concerning the renewal proposal and the "plight" of home owners would more readily come to the attention of tenants. There seems little cause to question the usefulness of the Elizabeth project for a determination of project planning impact on housing occupancy.

6. Occupancy in Commercial and Industrial Space

The project area contains an amount of industrial space that is of but limited use for research purposes. Nevertheless, occupancy data was picked up from the Price & Lee Directories for what it might reveal.

No discernible impact on occupancy owing to project announcement was found. Table 15 summarizes commercial-industrial occupancy for the past decade.

TABLE 15. PEARL STREET: COMMERCIAL & INDUSTRIAL OCCUPANCY,
1953 - 1963

		<u>1953</u>	<u>1959</u>	<u>1963</u>
PROJECT	Total C/I Land Uses	8	8	8
	Operating Firms or Shops	9	9	8
AREA	Vacancies	0	0	1
CONTROL	Total C/I Land Uses	6	7	7
	Operating Firms or Shops	6	7	5
AREA	Vacancies	0	0	2

SOURCE: Price & Lee City Directories

The reported project area vacancy occurring in 1963 was for a one story warehouse on South Street. This building had also changed ownership in 1961. The two reported vacancies in the control area involved small retail shops in residential buildings.

One additional vacancy occurred in the project area in 1961 in a building containing two tenants. By 1963, however, the vacancy had been filled by a new tenant.

D. REAL ESTATE MARKET ACTIVITY

7. Real Estate Transfer Activity

Research on real estate transfers was limited to the period 1959 through 1962, or the period covering the aftermath of project announcement, short of one year. Announcement occurred in mid-1957 followed by official blight declaration in June of 1959.

While research for the period prior to project announcement would be very useful, limitations in the data source precluded any earlier research. The source used was the Union County Realty Reporter,¹ which commenced publication in February of 1959.

Bonafide real estate transfers for the 1959 - 1962 period are summarized on the accompanying column chart and spot map. The same inhibiting impact on project area transfers is found, as was experienced in Cadman Plaza. In effect, only two transfers took place, involving one residential parcel and one industrial parcel. Two additional properties changed hands through purchase by the St. Elizabeth Hospital. In some sense, these cannot be viewed as "disinterested" transfers, since the renewal plan itself aims to provide land for hospital expansion.

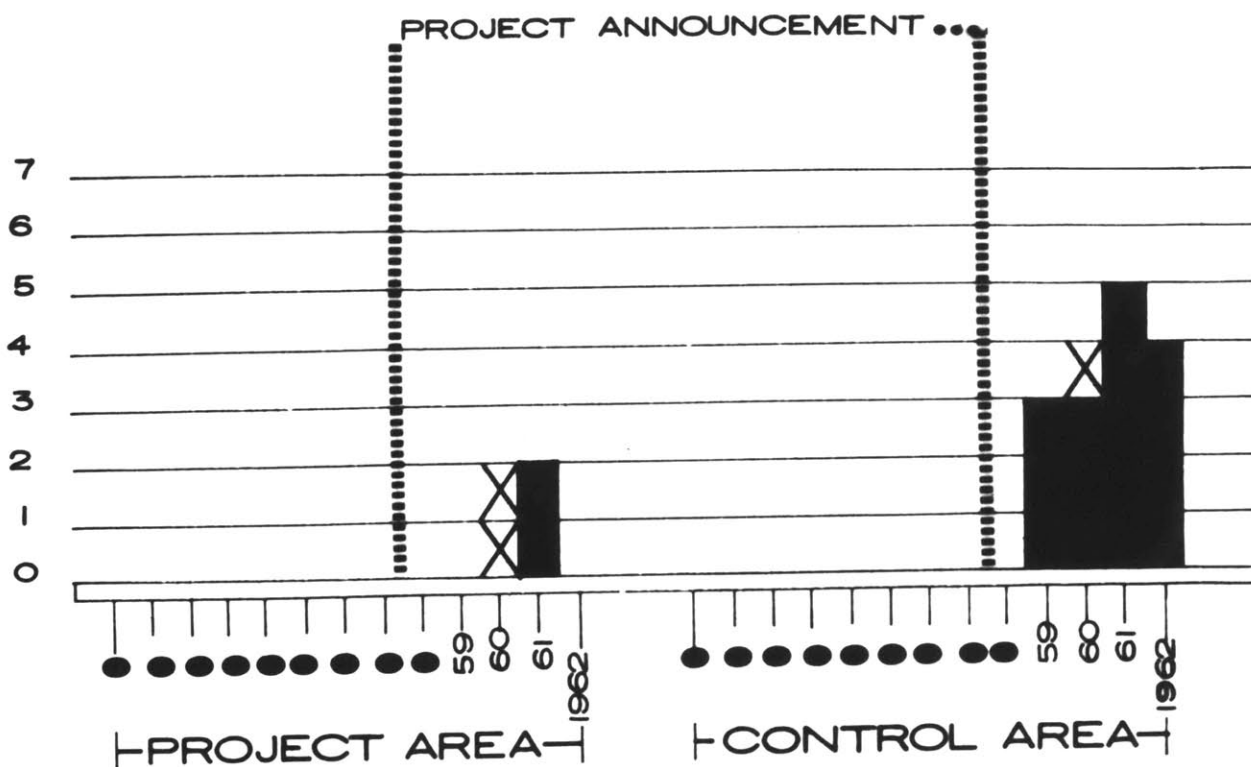
1. Union County Realty Reporter, 259 Union St., Hackensack, N. J.

BONAFIDE REAL ESTATE TRANSFERS

CHART 6

PEARL STREET RENEWAL AREA · JAN, 1950 — DEC, 1962

NUMBER OF TRANSFERS



SOURCE: UNION COUNTY REALTY RECORDER

■ TRANSFER

X ACQUIRED BY SAINT ELIZABETH HOSPITAL

The majority of transfers occurring in the control area during this four year period involved already built housing. Only two vacant parcels changed hands during this interval; transfers for the remaining bulk of new house construction during the four year period presumably took place before 1959. The single transfer of a "second hand" house in the project area, therefore, compares with 13 such transfers in the control area -- a distinct difference which allows some clue to what may have been taking place in the project area during the period for which data is lacking.

V. IMPACT EVALUATION:
PUBLIC INTEREST VIEW

A. THE DATA FINDINGS IN GENERAL

An evaluation of impact findings can be approached from two viewpoints. The first of these relates to the public interest, and the second to the private interests directly involved as tenants and owners in the two areas. This section will consider how the public interest has or has not been served, leaving the private interest sector to Chapter VI.

Positive impact was revealed only within the areas of improvement and real estate transfer activity. Inhibition of both can be shown to have served a constructive public end.

The impact of project announcement has resulted in a summary curtailment of new investments. Individual property improvements, purchase of property and new construction can all be defined as representing new investments. While neither project area indicated any prior

trend in new construction, both indicated significant levels of improvement and property sale transactions.¹

The inhibition of new investment in an area slated for demolition can be shown to serve a public purpose so long as certain assumptions remain constant. The chief assumption is that the project will be eventually implemented. Other assumptions concern the type of renewal treatment being proposed -- whether it be clearance or a combination involving some degree of rehabilitation or conservation. In both case studies, total clearance had been the stated objective.

The public interest is served by a freezing of new investment through an implied resource scarcity doctrine. Had new investment continued at an unabated pace in these areas, such increases in value would be reflected in higher acquisition costs at the time of condemnation. Since the urban renewal program is partially dependent on public funds to effect the write-down for land acquisition costs, any wasteful increase in value would be a direct drain on the taxpayer's wallet. It is therefore desirable that some economic restraint be exercised in areas slated for condemnation and clearance in order to make way for a public

1. It is, of course, assumed that transfers of title took place in Pearl Street before project announcement. The data research was limited to the period after project announcement.

improvement. The assumption that such will occur provides the rationale behind the property owner's reaction in holding back on further new investment.

If the assumption is altered to include rehabilitation measures, the same policy of economic restraint actually applies. Advisory Bulletin AB-2-58,² published by the Urban Renewal Administration, cautions owners from making premature improvements lest they fail to be in conformance with the standards to be set by the plan. A hold-off on all improvements is encouraged.

Some difficulties, however, arise because of an undue period of delay intervening between announcement and condemnation. A failure to provide normal maintenance investment on existing property may conceivably bring on a long term depreciation in value, thereby resulting in a lower appraisal at the time of condemnation.

Since research on valuation trends was not undertaken, this possibility can be only commented on. This may serve to qualify an otherwise unwarranted conclusion in claiming that public advantage attaches to an inhibition of new investments. Such a conclusion must entail an additional assumption which states that designated renewal

2. Warning Urban Renewal Area Property Owners Against Premature Improvements, A.B. 2-58, HHFA, Urban Renewal Administration, Washington, D. C., 1958.

projects are undertaken with the intention of a reasonable planning lead time interval before execution.³ Quick dispatch must be the intention of the public agency when it moves to declare an area blighted, as opposed to a conscious strategy of delay. The intention of both the Cadman Plaza and Pearl Street projects was one of reasonable dispatch; the circumstances making for delay having been unanticipated events.

The present use of these two projects deliberately sought out a contrived situation of delay in order to afford a maximum period of time in which impact could be registered in the findings. It is doubtful whether the public interest can be served if a public agency deliberately uses a strategy of delay in order to bring down prices or to achieve other indirect ends. Analogous experience in the area of zoning holds that such controls cannot be used to deflate eventual land acquisition costs: "It has often been held, however, that a city may not zone unreasonably in order to lower the value of the property prior to condemnation."⁴ Also, "when a police power regulation has no purpose other than to reduce land acquisition costs, the regulation will fall."⁵

-
3. In the Senate hearings on Urban Renewal in Selected Cities, op. cit., on page 2, Senator Douglas lists the problem of undue planning lead time as an issue of primary importance. He suggests that large urban renewal projects may require from 4 - 5 years of planning lead time before redevelopment can start.
 4. 59 Front Street Realty Corp. v. Klaess, 6 Misc. 2d 774, 160 NYS 2d 265 (Sup. Ct. 1957).
 5. Grand Trunk v. City of Detroit, 326 Mich. 387, 40 NW 195 (1949).

The preceding discussion has considered the question of public interest in the abstract, indicating how a curtailment of new investment in areas to be condemned can serve beneficial ends as long as some basic assumptions hold true. It remains to be seen how the public interest has been served within the peculiar circumstances attaching to both the Cadman Plaza and Pearl Street experiences.

B. THE PARTICULAR CIRCUMSTANCES OF CADMAN PLAZA CONSIDERED.

In the Cadman Plaza experience of more than seven years time lapse since its inception date, events saw the rejection of an earlier plan which was totally unacceptable to community demands and the adoption of one which satisfied the demands of a majority of community interests. In making such a judgment, it will be important to differentiate between a consensus of opinion supported by a majority of interests, and the disparate opinions of the individual few. The former defines the larger public interest, while the latter only detracts from it.

A number of comments by community spokesmen and quotes from newspaper articles will provide an impartial review of community participation in the formulation of the present urban renewal plan which is now in process of implementation. The moral drawn from this seven year experience does not imply that such a long interval of time is

needed in order to arrive at a consensus of demands, but rather points to the need for initial sensitivity and competent planning skills on the part of the public agency. Had the original proposal advanced for Cadman Plaza by the now defunct Committee on Slum Clearance contained some recognition of community needs, the struggle to gain acceptance would have taken that much less time.

The first renewal proposal made public in 1959 called for redevelopment of the area with a single high rise luxury rental building containing over 700 apartments, mostly of the efficiency type renting at \$53 per room.

Community reaction to this proposal was immediate. The first, and still the chief, concern was with the size and price of the accommodations proposed, and the effect thereof on the adjacent neighborhoods. Overwhelmingly, the community has favored family-sized, cooperative apartments in a 'middle-income' price range within the means of the young families who increasingly have sought homes in the Brooklyn Heights area. More recently, there have been demands for moderate density, good design, economic and ethnic diversity, attention to school and traffic problems.....⁶

Although agreeing that the area should be cleared, the Brooklyn Heights community opposed the specific redevelopment plan. The Brooklyn Heights Association, the Community Conservation and Improvement Council (C.C.I.C.) and the social action group of the First Unitarian Church, declared themselves in favor of a

6. Statement of March 20, 1962, by City of New York Housing & Redevelopment Board, p. 2.

middle-income cooperative, with predominantly family-sized apartments. They argued that cooperatives would mean home-ownership and would, consequently, foster stability in the neighborhood.⁷

Clearly expressing the convictions by which it was motivated at that time, the Slum Clearance Committee replied that 'cooperative housing in this area is impractical, because the high-value location of Cadman Plaza makes this area highly desirable for redevelopment of private fully tax-paying housing.' This reply drew the ire of the leading community newspaper, the Brooklyn Heights Press, which came out in opposition to the Slum Clearance Committee's proposal and called on the community to 'fight to insure the survival of the Heights as a distinct and gracious entity...'⁸

Led by C.C.I.C., the community concentrated on efforts to find ways and means of building large-sized, moderately priced, but yet fully tax-paying apartments, in line with the requirements set forth by the Slum Clearance Committee with the approval of the Brooklyn Borough President and the City Comptroller. The Council's efforts resulted in a proposal for the redevelopment of the site⁹ with FHA-insured, Section 213 cooperative apartments.

The C.C.I.C.'s proposal found strong community support; it was endorsed by the local Democratic Party organization, the Brooklyn Heights Association, the area's settlement house, the Public School Parents' Association, as well as by the ministers of all eight churches in the neighborhood. In spite of this evidence

7. Eric W. Meyer, "The Cadman Plaza Plan: A case study in the evolution of a Planning Concept" appearing in Pratt Planning Papers, volume 2 No. 2, p. 4. Planning Department of Pratt Institute, Brooklyn, N. Y., July, 1963. This is an authoritative article on the Cadman Plaza experience.

8. Ibid., p. 4.

9. Ibid., p. 4.

of overwhelming public support, the Slum Clearance Committee rejected the proposal in August, 1959.¹⁰

The adamant position maintained by the Slum Clearance Committee was finally broken when that Committee was abruptly dissolved by the city government, and replaced by the Housing and Redevelopment Board in June of 1960. The H.R.B. lost no time in announcing that it would proceed with the Cadman Plaza plan, but only after a complete review. In the Fall of 1960, H.R.B. announced a compromise solution, providing both rental and cooperative units. This plan won the support of the Brooklyn Heights Association, the Cadman Plaza Cooperative Association, and the Citizen's Housing and Planning Council.

In response to an editorial in the Brooklyn Heights Press, which called for a consolidation of community efforts and for greater opportunity for open discussion, 16 civic groups formed the Brooklyn Heights Temporary Steering Committee.¹¹

In spite of the establishment of the Steering Committee, the sprouting of splinter groups continued. A tenants' association was formed for the sole purpose of saving the particular building in which its members lived...¹²

The news that the design of the cooperative portion of the Cadman Plaza project, as proposed by the H.R.B., had been cited as 'outstanding' by the New York State

10. Ibid., p. 4.
11. Ibid., p. 4.
12. Ibid., p. 5.
13. Ibid., p. 5.

Association of Architects, calmed neither those who were in favor of the Goodman Plan, nor those who were opposed to 'luxury' housing.¹³

A revised plan was again issued by the H.R.B. in March of 1962, now providing for 100% co-op development, "which, while acceding to demands of the community, did not lose sight of the needs of the City as a whole."¹⁴

In consideration of the under-utilization of the area, the inappropriately mixed uses and the poor conditions of the structures, the almost total redevelopment of the site remained the basic feature of the plan. An exception was made in the contemplated conversion of the loft building to artists' studios, an idea borrowed from the Goodman Plan. Another important element of the new plan was its distinguished design. The new proposal calls for 980 apartments in three widely-spaced towers. To maintain the scale of the older parts of Brooklyn Heights, the towers would be surrounded by town houses, terrace houses, garden apartments, and "maisonettes," connected by platforms and pedestrian walkways covering parking spaces and permitting traffic-free pedestrian travel and ample open space for outdoor recreation. The proposal also calls for a pedestrian shopping plaza which, in addition to 15 stores and a supermarket, would include a theatre and a restaurant with outdoor dining.¹⁵

Following a Public Hearing in May of 1962, the plan as finally proposed by the H.R.B. was approved by the City Planning Commission.

13. Ibid., p. 5.

14. Ibid., p. 6.

15. Ibid., p. 6.

The concluding comment by Meyer sums up the seven year struggle in which the public interest asserted itself and won out:

This case-study in the evolution of a planning concept clearly shows that active community participation can affect the decision making process of the public agency carrying out urban renewal activities. Although the project will not realize the stated aims of any one group, the solution finally evolved contains many desirable social, economic, and aesthetic features. For such results to be achieved, responsiveness by the City Administration to the character, and to the legitimate desires, of the community, within such limits as may be dictated by city-wide considerations, is essential. Equally essential, however, is responsible conduct by the organization representing the community. Advance by community groups of unrealizable demands poses a definite threat to the constructive unfolding of the democratic process. This threat, while present in the Cadman Plaza case, was not fatal only because of the strength, steadfastness, and articulateness of the more responsible organizations.

This case-study also highlights the need, in times of heightened social ferment, for great sensitivity on the part of the City to the force and degree of conviction of local demands. Quicker reaction on its part, and a greater willingness to accept the inevitability of the process might make possible the emergence of acceptable compromise solutions much earlier, and with considerably less bruising effects.¹⁶

16. Ibid., p. 6.

C. THE PARTICULAR CIRCUMSTANCES OF PEARL STREET CONSIDERED

The circumstances making for prolonged delay in the Pearl Street renewal proposal have by now been sufficiently resolved so as to enable some observations on their significance. The Pearl Street Property Owners Association's effort to upset the municipality's blight determination was laid to rest when the New Jersey Supreme Court decided on January 20, 1964 in favor of the municipality.¹⁷

This legal contest had started in 1958 when local property owners hired their own "planning consultants" to evaluate conditions throughout the project area. The blight determination made initially by the City in June 1959 was contested. Legal action was brought against the City and was temporarily upheld by a Superior Court decision which requested greater detail from the Planning Board to determine the judgment of blight.¹⁸ The second survey findings and blight determination were eventually upheld, but not without appeal to the New Jersey Supreme Court.¹⁹

17. Schear v. Elizabeth, 321 Supreme Court of New Jersey, 41 N. J. Advance Sheets (1964).

18. The Superior Court had returned the matter to the Planning Board because of certain deficiencies in its findings.

19. Actually, this latter court's decision is over a conflict of interest issue not directly concerned with the findings of blight. The plaintiffs had originally instituted action attacking the blight declaration. Later, when the governing body did approve and adopt the determination of blight, the complaint was amended to challenge its validity. On appeal, the attack on the blight resolution is based solely on the dual office holding of the City Attorney of Elizabeth.

On one hand this legal contest may be seen as a common pursuit in satisfying the due process guarantees of the constitution. The Pearl Street area property owners' right to legal redress cannot be questioned, and the process can be seen as essential to the public interest in the larger democratic sense. But in a less overall sense, it may be questioned whether the time consuming debate over degree or criteria of blight findings has served any constructive end.

Much of the problem seems to lie in a public misunderstanding of the aims of the renewal program. This is partially the result of the newness of the program and more directly the result of a narrowly conceived emphasis on housing without recognizing broader urban needs. While the federal program now encompasses a broad range of renewal activities, public understanding is still tied to the notion of slum housing clearance as a hard to see rationale for comprehensive planning objectives. This limitation on public understanding may be seen as resulting from the legislative outgrowth of the program from the early days of public housing legislation. With succeeding housing acts,²⁰ the program has been widened, but is still billed as predominantly a housing

20. Statutory authorization for urban renewal is found chiefly in Title I of the Housing Act of 1949, as amended.

program. This basic limitation on making the aims more explicit in the public's eyes was discussed at length by Leach in "The Federal Urban Renewal Program: A Ten Year Critique."²¹ He remarks:

It is important to note that the very title of the Act implies an emphasis on housing rather than on urban renewal. Indeed, the broader subject has been treated all along as merely an aspect of the narrower one. When Congress decided to act in 1949, it saw slum clearance as an adjunct of the housing program, and that relationship has been maintained to the present day. In fact, however, urban renewal and redevelopment is the major task to be accomplished; improved housing is but one aspect of the broader program. Urban renewal means nothing less than full community development, the creation, as Adlai Stevenson put it recently, of "the preconditions of a good urban life that could become a new model for an urbanizing world."

....The difficulty is that in its concern to meet one need, it failed to understand that it was neglecting a greater one. To this day, urban redevelopment has not been brought to the center of the stage where it belongs; and it suffers from the minor role it has been assigned.²²

This problem of public recognition of the wide focus of the renewal program was again referred to in the recent Senate Subcommittee Hearings on Urban Renewal held last October in 1963. At one of the hearings, representative Rains observed that much misunderstanding

21. Richard H. Leach, "The Federal Urban Renewal Program: A Ten Year Critique" in Law and Contemporary Problems: Urban Renewal Part I, Vol XXV, No. 4, 1960, p. 777. Duke University School of Law, Durham, North Carolina.

22. *Ibid.*, p. 778-9.

and criticism of urban renewal was the result of a shift in the nature of the program.²³

The Pearl Street case typifies this public misunderstanding, in which the controversy takes on a loud cry over the sole issue of blight and fails to stress the broader benefits which the plan attempts to achieve. These include a site for a public high school, land for hospital expansion, a major realignment of a street, and new housing. It may well be that conditions of blight in the Pearl Street area fail to meet the public's eye with resounding conviction. But if the public were more informed as to the aims of comprehensive city planning, via urban renewal, their objections may have been more readily appeased. The difficulty, however, is one of procedural confusion in which master planning implementation is proceeding under the guise of only a slum clearance proposal.

In an editorial statement of March 22, 1962, the Elizabeth Daily Journal took approximately the same position:

The redevelopment program, supported by municipal and federal funds, would clear the section except for the hospital buildings, and sell part of it for apartment houses. The city also has proposed a new high school and campus there. . . . Naturally there are residents who do not want to be driven from their homes. The merits of this controversy remain unsettled but certainly not undebated.

23. Thomas Ennis, "Progress Found in Urban Renewal" in New York Times, 1-19-1964, p. 1.

The issue is vital to the property owners, both those who do not want to be disturbed and the others who would move but would face the task of finding new quarters. It is even more significant to the city with its objective of a new high school plant and its pressing need for improved ratables. . . .The community needs the revitalization, the business accommodations, and the revenues reasonably expected of a redevelopment program.²⁴

In recognizing the broader public objectives which the renewal plan attempts to fulfill, the opposition of private property interests in the Pearl Street area can be seen to have impeded those broader objectives.

24. Editorial in 3-22-1962 issue of Elizabeth Daily Journal.

VI. IMPACT EVALUATION:
PRIVATE INTEREST VIEW

The preceding discussion has considered how the impact findings are the outcome of events which can serve the public interest. The observed slow-down in ongoing property improvements and in real estate transactions may be generally viewed as serving constructive ends in the public interest, and the specific circumstances relating to the Cadman Plaza experience can be interpreted as having served this same interest by allowing for the formulation of a plan acceptable to the community. But final judgment as to whether the public interest has been wholly served must await a look at the multiplicity of private interests which reside in the two case study areas. Have these individual property owners and tenants fared well during the prolonged period of uncertainty brought on by project planning?

The private interest is, after all, some part of the public interest. If private property rights have been exposed to undue hardships which run counter to basic constitutional rights, such findings would significantly modify the public interest view. Our system of government places a high premium on individual rights, and their freedom of expression must be safeguarded without arbitrary curtailment. While some diminution in the expression of individual rights may be tolerated in the course of reaching an objective in the interest of the public at large, such diminution must not smack of any dictatorial pushing about.

This states the issue of private interest in rather blunt terms; the problem is more one of subtle degrees. In a legal sense, property can be viewed as a group of separate rights each one of which deserves to remain intact. The line drawn by society between the privilege of use and the interest of surrounding owners is frequently difficult to define.

It must therefore be determined whether the impact observed in the data findings in any way represent an infraction of property rights. That is, can the marked slow-down in real estate transfers be construed as a possible denial of the right to sell? Or can the relative decline in value resulting from an almost non-existent level of on-going improvements be looked upon as depreciation losses? More directly, the context of this research effort also asks whether the accrual of any inconvenience or damage suffered by existing interests in the subject areas

has possibly mounted up during the period of delay.

In order to seek answers to such questions, the data findings must be evaluated each as separate entities affixing to some principle of law. An exacting evaluation of legal points is obviously beyond the competence of this author. But the general outlines of such implications can be covered through a discussion of recent law journal articles on the subject in question, and by reference to cases where analogous situations existed.¹ The findings of such a review do not appear to hinge upon any subtle differences of opinion which might unduly weaken the discussion, but instead indicate that a wide margin exists before any of the data findings can be passed off as losses.

The discussion therefore points to a conclusion that the observed impact on property interests cannot be clearly construed as representing any infraction of rights. The distinction, however, is that any "losses" which have taken place are termed as "incidental losses" under eminent domain. The conclusion that such losses cannot be held as damages under present interpretation of law therefore does not go so far as to say that all is well. What the layman defines as "incidental"

1. The author is indebted to Arnold Mytelka of Clapp and Eisenberg, Counsellors at Law, for a run down on applicable articles and law cases, as well as for his comments on the present evaluation.

differs sharply from the legal definition in which the word takes on such elephantine proportions that it all but becomes a misnomer.

For example, most states do not compensate for the cost of moving personalty from condemned premises.² This oftentimes sizeable financial loss is partially made up by the relocation allowances provided by federal and certain state statutes. But these allowances are nominal, and numerous examples of outrageous losses can be pointed to. The fact remains that such "losses" attendant upon relocation are not legally recognized as compensable. What other "losses" might be added to this list of "incidentals"?

The stock list of incidental losses for which no compensation is provided generally includes the destruction of good will, expenses incurred in moving to a new location, and profits lost because of business interruption or inability to relocate. In denying these losses, courts have recognized that such action makes for a derogation of the indemnity principle which results in "harsh" law.³ Repeatedly, the issue of incidental losses has been severely criticized by contemporary legal

2. The majority rule in most American jurisdictions holds that moving expenses are not compensable. See 4 Nichols, Eminent Domain, 14. 2471 (2) (Rev. 3d ed. 1962)

3. Note, "Eminent Domain Valuations in an Age of Redevelopment: Incidental losses," 67 Yale Law Journal 61 (1957), p. 61.

commentators who have sounded the call for a complete overhaul of present practice.⁴ Recognizing the dilemma with which they are faced, many courts do arrive at some satisfactory solution by relying upon a broad or lenient interpretation of legal principles.⁵ Such practice serves but to highlight the inconsistencies and confusions which beset this area of law.

This, then, is the point of departure upon which the present evaluation can appropriately start. We deal with a no man's land of losses which is, in part, tacitly recognized by Federal and State allowances by making up certain losses, and openly contested by the legal profession. The differences of opinion arise over what is to be deemed a justifiable loss for few if such loss is incidental to the interests of the majority which are being benefited.

These distinctions are apparent in a New Jersey Supreme Court decision of 1958 dealing with a case with circumstances pertinent to the

4. See Jahr, *Law of Eminent Domain*, 112 (1957); Searles & Raphael, "Current Trends in the Law of Condemnation," 27 *Fordam Law Review* 529 (1958-59); Note, 72 *Harvard Law Review*, 504, 526 (1959); and op. cit., 67 *Yale Law Journal*.

5. While generally adhering to a market value theory of compensation, courts have taken a flexible approach, the objective being "Justice and indemnity in each particular case." See *City of Trenton v. Lenzner*, 16 N. J. 465, 476 (1954); *State v. Burnett*, 24 N. J. 280, 288 (1957).

present research effort. In Wilson v. Long Branch⁶ a group of property owners within a renewal area charged, among other things, that the "very determination of blight in itself constitutes a taking of property" because its market value is thereby destroyed or lessened. They further claimed that with the threat of condemnation hanging over their property, they could not sell or improve it. The New Jersey Statute in effect is claimed to be contrary to basic law⁷ which permits a municipality to impair the value of property and restrict its use by a declaration of blight without requiring compensation for such loss.

In its unanimous decision, the court dismissed this argument by saying:

... "But this is not a taking in the constitutional sense. It is akin to the result which flows from municipal zoning. If some diminution in market value can be said to follow from a finding of blight inspired by the valid exercise of police power, it is damnum absque injuria.⁸ This refers to the law's recognition of damages in fact which are not compensable at law.

6. Wilson v. Long Branch, 27 N. J. 360 (1958), 142 A 2d 837.

7. N. J. Statutes: 40:55-21.10. "Private property shall not be taken for public use without just compensation."

8. Wilson, op cit., p. 840.

The principle of the interests of the few being subservient to the majority was elaborated upon by citing some earlier decisions, including those of the United States Supreme Court, as follows:

A limitation of private property rights in land to the extent reasonably necessary to meet a public exigency is justifiable under this sovereign power.⁹

Ordinarily, a course of action may be deemed to be in the public interest when it fairly tends to promote the good of the community at large.¹⁰

An ulterior public advantage may support a comparatively insignificant taking of private property for what, in its immediate purpose, is a private use.¹¹

The principle is firmly established in our Federal jurisprudence that injury to private property ensuing from governmental action in a proper sphere, reasonably taken for the public good, and for no other purpose, is not necessarily classable as a 'taking' of such property within the intendment of the constitutional guaranties against the deprivation of property without due process of law, or the taking of private property for public use without compensation.¹²

The unanimous decision rendered by the New Jersey Supreme Court in Wilson v. Long Branch appears to deal a sweeping blow to the thesis

9. Block v. Hirsh, 256 U.S. 135, 41 S. Ct. 458, 459, 65 L. Ed. 865.

10. State Board of Milk Control v. Newark Milk Company, 118 N. J., Eq. 504 179 A. 116.

11. Nobel State Bank v. Haskell, 219 U.S. 104, 31 S. Ct. 186, 188, 55, L. Ed., 112.

12. Mansfield & Sweet v. Town of West Orange

that the "very determination of blight in itself constitutes a taking of property." Such an assumed impact is, of course, one of the key motivations which has led to the present research effort. The broad import of the Wilson decision may, however, be somewhat qualified by pointing out that the asserted damages were more theoretical than actual. The property owners in question did not contend to have suffered any actual damages as yet, or at least such a contention was not supported by factual data. This point of their argument was one of several in the overall case. Their argument of anticipated damages may be further weakened when one considers the U. S. Supreme Court decision in Lehon v. City of Atlanta¹³ arising out of an official street mapping ordinance. Certain properties were within the path of a mapped street to be built some time in the future. The court said:

To complain of a ruling one must be made the victim of it. One cannot invoke to defeat a law in apprehension of what might be done under it, and, which if done, might not receive judicial approval.¹⁴

Despite this qualification, the Wilson decision must nevertheless be taken at face value. The guiding rationale of overall advantages gained by the public interest at the expense of the interests of the

13. Lehon v. City of Atlanta, 242 U.S. 53.

14. Ibid.

minority was stated at length. That this ruling has been issued by the New Jersey Supreme Court in a case with circumstances similar to those being dealt with is, of course, especially significant. The court's statement effectively bars the chance of any redress that may be owing from an accrual of "incidental" losses over a period of prolonged time lapse within the context of the blight declaration. Some degree of interference with or loss of property can be condoned as a possible effect resulting from the municipality's designation of an area for renewal treatment. The event of designation is itself looked upon as a necessary prelude to renewal action, and any back-wash attendant upon such declaratory steps are considered as unavoidable disturbances in the course of striving for the larger public benefits which renewal will reap.

If some degree of incidental loss is tolerable, it remains to be determined what that degree is. At what point does any limitation on rights become a 'taking'? For even in zoning, regulation must not go so far as to result in an unreasonable restriction on the use of property.¹⁵

An interest can be considered as "taken" when it is technically only damaged; thus anyone of numerous interests inhering in property might be subject to damage. The definition of "taking" can be clarified

15. See 59 Front St. Realty Corp v. Klaess, 6 Misc. 2d 744, 160 NYS 2d 265 (Sup Ct. 1957); Grand Trunk v. City of Detroit, 326 Mich. 387, 40 N.W. 2d 195 (1949).

by distinguishing it from the use of police power in the following manner. Taking either destroys or more usually transfers certain rights of use and enjoyment of land, while the exercise of the police power only restricts these rights. The distinction therefore depends on how far any interference with the free use of property may go.¹⁶ Should the degree of interference or damages reach the point where a property interest is in effect destroyed, consequences must be paid. "Whenever lawful rights of an individual to possession, use or enjoyment of his land are in any degree abridged or destroyed by exercise of eminent domain, his property is pro tanto taken and he is entitled to compensation."¹⁷

Since the circumstances in Wilson v. Long Branch were not supported by a factual showing of losses, it becomes speculative as to what position courts would take if confronted with an actual catalog of impact as dealt with in the case studies. In some sense, the Wilson decision may have prejudged the claim of damages by its argument which is based solely upon anticipatory events.

Reference to official street mapping and public park mapping cases indicates that the line between an acceptable use of an impending exercise of the eminent domain power is a narrowly drawn one. This

16. See "Condemnation of Future Interests," 43 Iowa Law Review 241 (1958)

17. Cheve v. Whitehead, I.F. Supp. 321.

distinction is brought out in the following comparison, as quoted from an article appearing in the Harvard Law Review:¹⁸

By designating streets and roads on an official city map, municipalities can limit development of private property until such time as an actual taking is desirable; courts have held this a proper method of reserving land for eventual public use and have not demanded payment of immediate compensation so long as the owner could still make reasonable use of his property. (Headley v. City of Rochester, 272 N.Y. 195, 5 N.E. 2d 198 1936.) Where mapping has been used to reserve property for open space purposes, however, it has been disapproved. In Miller v. City of Beaver Falls (368 Pa 189, 83 A 2d 34 (1951)) the court noted that it had approved the use of official maps to reserve land for street purposes because that end seemed essential and had gained legitimacy through long use, but found no such compelling reasons to allow mapping for parks.¹⁹

In this latter park mapping context, the owner was effectively barred from building on his land during a three year time interval provided by the ordinance in which the municipality could make up its mind. The town maintained its option also to drop its plans after the three year period for any land so designated should it decide not to proceed. The court rejected the ordinance in question as unconstitutional, saying:

The action of the City of Beaver Falls in plotting this ground for a park or playground and freezing it for three years is, in reality, a taking of property by possibility, contingency, blockade and subterfuge, in violation of the....constitution...²⁰

18. Note, "Techniques of Preserving Open Spaces," 75 Harvard Law Review, 1622 (1962)

19. Ibid., P. 1638.

20. Miller v. City of Beaver Falls, 368 Pa. 189, 83 A 2d 34 (1951).

Courts in Pennsylvania have taken the same position in park mapping attempts. In Chelton Trust Company v. Blankenburg²¹ the court struck down an ordinance appropriating certain lands for use as a park after a time lapse of only a year and three months on the part of city officials. The inability of owners to make use of their vacant land was held to be both unreasonable and unlawful.

There are important distinctions of fact in these cases as compared with the circumstances surrounding the present research effort. In the Cadman Plaza and Pearl Street Projects, all land was largely developed, with only scattered vacant parcels. The essential distinction to bear in mind would appear to be whether the act of designation imposed any substantial loss on the ability to make reasonable use of existing property. The data findings do not indicate that such was the case, except possibly in connection with a loss of the right to sell.

The following review of the separate categories of the data research specifically considers the distinction between substantial or negligible interference with the use of property.

1. Curtailment of property improvements. The drop in property improvements that set in shortly after project designation might be shown to reflect a decline in market value for those owners who were discouraged

21. Chelton Trust Co. v. Blankenburg, 241 Pa. 394, 88 A 664

from improving. Property owners caught in these circumstances suffered an economic disadvantage relative to those property owners outside of the renewal area who did continue with improvements. These latter owners were able to maximize their positions in economic terms by making their property more attractive to the market.

But the evidence indicates that property owners within the renewal area were able to sustain their pre-existing level of economic returns, although discouraged from any possible maximization of economic potential. This may be interpreted as only a nominal interference with their enjoyment of property, since for all outright purposes, they still had command of a reasonable use of their property.

The inhibition of improvements must also be considered from the tenant's viewpoint, especially commercial leaseholds. It is quite possible that a merchant may have spent a considerable amount of money on his shop, and in the event of condemnation would completely lose his improvement investment. The Cadman Plaza research revealed a high level of commercial property improvements. But oddly enough, the long period of delay intervening between the project announcement and condemnation dates probably afforded an ample period in which the improvements became depreciated or written off. In the context of delay or ample forewarning, the effect of condemnation upon commercial

leaseholds with sizeable improvement investments at stake is cushioned. But in the context of only brief forewarning many losses may be suffered.

2. Impact on new construction. The prior-to-project announcement trend within the two project areas indicates an almost non-existent incentive. Nevertheless, the critical distinction at issue is that property owners were not denied building permits as was the situation in the aforementioned park mapping cases. Their choice to build within the uncertainty created by the renewal proposal was still open.

3. Impact on occupancy. No discernible influence on occupancy levels in either residential or commercial properties was observed. Even the existing examples of scattered vacancies would doubtless be condoned as a negligible loss under the over-riding community welfare principle.

4. Impact on property transfers. A substantial inhibiting impact was observed in the data. But a loss of the owner's right to sell is beset by a question of motive which was impossible to determine in the research sources used. The inhibiting impact generally works from two directions: property owners themselves decline to sell under the expectation of getting a lucrative return through the condemnation award,

or property owners are loathe to buy property which is earmarked for condemnation. Should the latter situation prevail, the effect of designation has eliminated an existing market.

The loss of the right to sell can be construed as a substantial incidental loss, assuming an ability to prove that the cause of this loss was owing to the destruction of marketability. Property can no longer be looked upon as possessing an inherent value, but can be looked upon as an outright commodity. A commodity may be rendered as useless if it can not be sold. The inhibition of real estate transfers uncovered in the data research may therefore be looked upon as a somewhat significant finding which represents more than an idle "incidental" loss.

.

The review of the data findings for possible infractions on property rights indicates a sufficient area of weakness to support some cause for concern. But this concern tends to be confused by the inequities of the present system which do not recognize many incidental losses already on the books. For the single most important distinction arising out of the preceding discussion is that even if the particular findings of the data research themselves may not be critical, the indication is that almost any finding of possible impact threatens to pass off

into the vague area of incidental losses in eminent domain. The evaluation may now sum up by considering this underlying weakness in greater detail so as to make clear that the research findings do not rest upon any footing of complacency.

Writing in the Yale Law Journal, a recent legal analyst states that "Today more than ever before, the denial of incidental losses assumes major importance in the area of eminent domain. The scope and nature of contemporary takings have aggravated the injury which results from condemnation."²²

In reviewing the historical development of the use of the eminent domain power in this country, the same author lays particular stress on two areas of weakness in the system. The first of these concerns the fair market value formula of arriving at just compensation, and its inadvertent failure to come to grips with the so-called intangibles which make up the list of incidental losses.

Measurement of 'just compensation' in condemnation actions has long plagued the field of eminent domain. The basic system of compensation--fair market value--was judicially developed in an effort to indemnify the condemnee for the property loss occasioned by condemnation. This formula, however, fails to assess what are often severe

22. Op. Cit., 67 Yale Law Journal 61 (1957), p. 61.

and costly losses sustained by owners and lessees of property. In theory, the market value standard is directed toward compensating the condemnee for the physical property loss suffered; thus it generally excludes recompense for incidental losses -- losses typified by damage to or destruction of good will, expenses incurred in moving to a new location, and profits lost because of business interruption or inability to relocate. In denying these losses, courts have recognized that such action constitutes a derogation of the indemnity principle and makes 'harsh' law. Nonetheless, the practice continues, justified by reasoning which, upon critical examination reflects dubious wisdom or logic.²³

A similar critical view is expressed by another author writing in the Harvard Law Review as follows:

In view of the increasing number of situations in which a public agency may take private property and the very limited judicial scrutiny applied to such takings, the traditional measures of compensation paid and the policies underlying them require reappraisal.²⁴

The second area of shortcoming arises because of an underlying premise which maintains that the government need pay only for what it has gained by the taking, rather than for what the property owner may have totally lost.²⁵ Quoting again from the article "Eminent Domain Valuations in an Age of Redevelopment: Incidental Losses" the following is stated:

23. Ibid., p. 61.

24. Note, "Urban Renewal: Problems of Eliminating or Preventing Urban Deterioration," 72 Harvard Law Review 504 (1959), p. 526.

25. Op. cit., 67 Yale Law Journal 61 (1957), p. 67.

When first presented with cases involving substantial incidental damages, American courts denied recovery for these losses on the ground that the rights of property did not inhere in such intangible interests. Soon, however, the courts adapted their arguments in eminent domain to the expanded concept of property existing in other areas of the law and recognized that such losses did, in fact, involve property interests. Nevertheless, they continued to disallow recovery; the now traditional rationale for denying incidental losses was advanced: these interests are not property rights vis-a-vis the government. Reasoning that government need only pay for that which it 'takes', the courts considered as a corollary that taking involved a taking over of tangible interests. Since government when condemning property seldom takes over anything but the realty, it need only pay for what it has gained rather than for what the condemnee has lost. This argument has been buttressed and given constitutional foundation by the assertion that the right to just compensation is a property right and not personal; in effect, the distinction results in the scope of taking being restricted to the property involved.²⁶

The author continues by saying:

Recent use of eminent domain exaggerates the need for abandoning the limitations of a strict market value system and for awarding incidental damages. The outdated property concept upon which present evaluation standards are based, the absence of alleged objectivity in market value and the recognized practice of ignoring or creating exceptions to the basic market standard all argue persuasively for evaluation reform. But the changing emphasis of present-day takings amplifies the equitable and legal necessity for a revised standard of compensation.²⁷

The end result of this evaluation therefore leads to a two-fold, if somewhat conflicting set of conclusions. In the first inquiry, the data

26. Ibid., p. 66

27. Ibid., p. 88.

findings could not support any measurable instance of damages, except for possibly a loss of the right to sell. But in the second emphasis of the findings, the term "incidental loss" was shown to encompass a wide realm of opportunities, either gained or lost. The latitude which exists in definition serves to underscore the precarious context in which property interests are placed vis-a-vis the official blight designation of an urban renewal area. An insistent voice has been raised by the academic community which urges a reappraisal of the incidental loss issue in eminent domain decisions.

VII. CONCLUSIONS OF THE RESEARCH

In considering the possible differences playing upon the public and private interests at stake in designated renewal areas, a possible conclusion may be that the public interest stands to lose somewhat less than the separate interests directly involved. In terms of simple proximity to the disturbances being created by a plan this appears to be reasonable. But there is no reason to suppose that the two interest areas are necessarily at basic odds. It remains to be seen how the public and private interests can each benefit or at least not suffer any ill effects which are not even recognized as compensable by current judicial rulings. What changes might be suggested in statutory sanctions in the use of eminent domain so as to assure better safeguards to offset the general uncertainties in which private interests are placed?

Any further generalizations first deserve some qualifications.

Caution must enter into any assumptions that these data findings can support. Generalizations for the entire gamut of renewal experience to date cannot be simply made. As with most research programs dependent on limited data observations, the findings of such data cannot be equated with the entire field of such encounter.¹

As such, the apparent gains in the public interest by an overall restraint on new investments may be a sound observation if certain assumptions are kept in mind. But the particular circumstances of any given project area may become highly individualized as facts unfold themselves, thereby not supporting any blanket statement that delay itself can be considered as wholly beneficial as may have been the case in Cadman Plaza. The frustration of the City of Elizabeth in attempting to carry out the construction of new community facilities (such as the

1. Also, not all aspects of the problem were investigated. The effect on valuation trends is one of these exceptions; in which a gradual decline of value might result from a failure to keep up improvements. Would the condemnation award appraisal match the earlier position of value? Another aspect not investigated is how refinancing activity may have been affected. Situations in which banks adopt a closed door policy to any further financing in designated renewal areas have been reported. See, for instance, the detailed account given in the June 30, 1962 issue of the New York Times: "Brownstone House with Garden Has Headaches with its Charm." A buyer of a run-down house in a renewal area encountered endless difficulties in securing financing. The local banks had black-listed the property because the city planned to survey the area for slum clearance. This data research did initially consider impact on refinancing activity, but because of difficulties in data interpretation the findings were not given serious weight. See Chart 7 in the Appendix, dealing with Cadman Plaza.

high school) has doubtless detracted from the public interest. But even here, certain additional distinctions apply. The propriety of the planning technique being used to achieve the stated objectives may warrant concern if definitions as to what makes for blight are rationalized to a point so that they fit predetermined issues of master planning. The plan may have all signs of soundness, but the difficulty may lie in a procedural subterfuge which hides behind a narrowly stated urban renewal plan. Public acceptance and appreciation may stand the risk of being alienated. Urban renewal has grown into an instrument with teeth for getting things done that were previously beyond implementation in many master plans. There may be some risk that slum clearance name calling has become the slogan for comprehensive planning.

These comments in regard to the Pearl Street experience may be unfairly stated in the present context, since definite deficiencies were pointed out in the analysis of the area in part IV. The present remarks are intended more to illustrate the chief problem area touched on by the research findings.

One of the main inducements that prompted this research was a concern over a likely widespread hardship situation taking place within areas designated for renewal, but not yet condemned. What of the wholesale vacancies and so-called indirect subsidies of ownership interests that critics have charged the renewal program with?

The fact that no serious impact was found in the more critical data aspects may suggest that the charge is somewhat exaggerated.² A possible loss of the right to dispose of one's property was found, confused as this may be by the issues of motive.

But in the process of reviewing the data findings in the light of legal implications it was discovered that the whole area of so-called incidental losses is beset by what the layman might justly term as absurdities. A businessman can, for example, suffer a loss of his long established good will which is inseparably tied to a specific

-
2. The possibility of the blight declaration eventually "withering on the vine" after some initial excitement must also be recognized. The two projects chosen for research revealed what were considered to be a high level of local awareness as to the existence of the renewal plan, buttressed by a visible image of nearby cleared land as an accomplished fact of what condemnation could result in. Testing such a qualification of over-stimulation of the data media, might warrant the assumption that a less intensive level of reaction may occur in areas where apathy is an overt symptom. While some initial drop in activity may occur, the long term outcome could well be a recovery showing no apparent influence from the still existing, if forgotten renewal plan. Some evidence can be pointed to in support of such a contention. This concerns past experience in Washington, D.C. where the Foggy Bottom area had at one time been involved in the so-called Federal "taking area". The government could at will condemn any part for expansion of office facilities. The reported experience accounts no long term effect. New construction had in fact taken place within a ten year period. "Due to the early date of these taking lines, and no action taking place for many years, property owners and builders ignored them, as did the lending institutions." -- Correspondence with Robert Plavnick, Chief, Federal Planning Division, National Capital Planning Commission

location that can't be made up by simple relocation allowances.... allowances which aren't even recognized as compensable by current rulings. Also, a substantial mass of equipment belonging to a manufacturing plant stands the chance of being written-off as a non-compensable loss by getting involved in a tangle of definitions between "personal" and "real" property.³

The outcome of the data evaluation therefore indicates that even if the data findings had uncovered what would be considered a "wholesale hardship" situation, such experience would quite probably be passed off into the incidental loss fiction.

The so-called losses already on the books are seen to exist as serious inequities. Thus the generally "no-adverse impact" picture presented by the specific data findings must rightly be considered in this wider context. The general uncertainties brought on by project announcement are part of this problem. This is further stressed when it is realized that a municipality may decide to withdraw its intentions of taking land if the plan should fall through. Such statutory leeway is permitted in New Jersey⁴ and in other states.

3. A telling case in point is currently pending before the New Jersey Supreme Court in State of N.J. v. Bernard Gallant, et al (Brief for the defendants by counsel, Clapp & Eisenberg). In this case a ribbon manufacturing plant was condemned in the path of a new highway approach, only to find itself with the looms basic to its operation as left behind. This equipment was classed as "personal" and non-compensable. Yet the owner found it completely uneconomic to relocate the equipment and had to abandon it.

4. As noted in Wilson v. Long Branch, 142 A 2d 837.

The withdrawal of a plan after some period of time lapse may, of course be owing to unforeseen setbacks in what had been a well conceived plan. But such retraction of an announcement to carry out taking of land may also be owing to nothing more than political bombast which has been based on an ill-conceived renewal program.

The inception of numerous local programs at a time when the guiding framework of the Community Renewal Program was not yet available can be pointed to. A common lack of economic realism in plans can also be mentioned. Some element of wishful thinking can perhaps be said to exist in the city planning process anyway.

In regards to the renewal problem, an influx of poorer elements has real significance in changes that are taking place. The renewal effort facing many of our cities can, after all, be ascribed in part to drastic changes in the population composition of an urban area. This climate of upheaval and change may suggest what one suspects is a basic fallacy of treating physical symptoms of decay while failing to recognize the underlying problems which are more human in nature.

These observations, as well as the more critical points brought out by the earlier discussions, all point in some way to a need for more adequate safeguards in the statutory sanctions relating to the use of eminent domain. A lack of safeguards may itself set the stage for questionable planning practice. The prevailing legal framework is in some measure responsible for such an uncritical process in failing

to set up adequate procedural safeguards. Mention can also be made of current judicial restraint in regards to actions by local governments. Courts are reluctant to supervise local matters; which may certainly be wise in light of a long established principle of democratic freedom of self-rule. But the complicating factor entering into the picture is one of rapid technological change which causes great moments of uncertainty in how to approach new problems.

Judicial restraint, therefore, may be partially a recognition that complex issues in a highly specialized urbanized society are at best somewhat unapproachable. The traditional checks and balances operating in an earlier setting of agrarian enterprise may have some loose ends in the present environment. The need, as such, is for a periodic reappraisal of these checks and balances with an eye to more frequent tying up of loose ends.

These extended remarks may suggest to the reader that a detailed proposal for recommended changes in eminent domain statutes is to follow. Such working proposals are, of course, beyond the scope of this paper. The suggested "safeguards" listed as possible counter-measures to existing statutory free-play concerns two devices in use in other countries.

In Quebec, Canada, the "promulgation of a plan" which may involve land takings is reportedly followed by a reduction or elimination

of taxes. Possibly more effective yet is a Scandinavian⁵ measure which makes an area immune from any subsequent taking if the municipality has failed to move ahead with its plan after a two or three year time lapse. Such a built in time clause would serve the purpose of forcing the municipality into a thorough evaluation of its capabilities to implement any plan before it proceeds to go about designating an area for eventual condemnation.

These possible measures appear to be at first glance effective devices in checking free-play in existing statutory sanctions relating to eminent domain. They would, of course, require thorough review for possible adoption. Nevertheless, self-imposed provisions along along these lines may act to eliminate the problems of uncertain side effects posed by the pre-condemnation interlude, and promote a more stringent before-hand evaluation of any renewal program. The long term avoidance of complications, as well as public acceptance of the planning process may also be better achieved by more adequate safeguards.

5. As mentioned by Charles Abrams in a lecture. The specific country is not recalled.

VIII. APPENDIX

A. Project Selection Phase Checklist.

The checklist on criteria used in the project selection phase of the research program is shown on the following pages. Listed are all those projects initially considered as possible case studies. Brief comments as to the disposition of each are indicated.

CHECKLIST ON CRITERIA FOR PROJECT SELECTION

Project Name & Location:	Pearl Street R-23 Elizabeth, N.J.	George Street R-31 New Brunswick, N.J.
Land Uses:	residential w/ scattered industrial	entirely residential
Gross Acres:	23.6	30.8
# Families:	111	
# Structures:	92	
Type Structures:	1&2 family detached	1&2 family detached
Reuse Proposal:	Clearance for Residential & Public	Clearance for Residential & Public
S & P Approval:	9/1957	3/1958
L & G Approval:	6/1959	
Interview with official:	with project planner	with planning director
Secure boundary map for site inspection:	o.k.; done	o.k.; done
Control Area:(?)	looks o.k.	looks o.k.
Community renewal awareness:	previous project cleared & nearby. program at impasse.	previous project cleared & nearby. Additional projects in planning.
Comment:	Marked delay with legal dispute & default of sponsor greatly publicized	Less advantageous because of lack of land use spread & data source limitation.
Disposition:	Accept	Open for possible later acceptance

CHECKLIST ON CRITERIA FOR PROJECT SELECTION

Project & Location:	Cadman Plaza R-25 Brooklyn, NY	Battery Park R-14 Manhattan, NY
Land Uses:	Predom. residential w/ comm & ind.	Predominantly commercial
Gross Acres:	15.1	12.8
# Families:	184	9
# Structures:	86	101
Type Structures:	4 story row & tenement	varied; loft type
Reuse Proposal:	clearance for resi.	clearance for resi.
S&P Approval:	6/1958	12/1957
L & G Approval:	9/1961	3/1961
Interview with official:	with H.R.B. planner	with H.R.B. planner
Secure boundary map for site inspection:	o.k.; done	o.k.; done
Control Area? :	looks o.k.	looks o.k.
Community Renewal awareness:	project adjoins civic center--earlier clearance activity. Wide opposition to proposal.	wide city-wide renewal context; but nothing in immediate vicinity
Comment:	Land use spread good. Apparent up-grading in adjoining areas.	All commercial uses good for study of impact on commercial leaseholds.
Disposition:	Accept	Open for possible later acceptance.

CHECKLIST ON CRITERIA FOR PROJECT SELECTION

Project Name & Location:	Riverside - Amsterdam R19 Manhattan NYC	Seward Park Extension R=51, Manhattan NYC
Land Uses:	Predom resi.	Residential & Comm.
Gross Acres:	35.0	22.0
# Families:	593	770
# Structures:	121	184
Type Structures:	High rise & rowhouses	Six story tenements
Reuse Proposal	part clearance & rehab, although uncertain	clearance for resi.
S&P Approval:	12/1957	12/1958
L & G Approval:		
Interview with Official:	with H.R.B. planner	with H.R.B. planner
Secure boundary map for site inspection:	o.k.; done	o.k.; done
Control Area? :	not o.k.	questionable
Community renewal awareness:	"blanket" west-side program leaves no unaffected control area, although making for strong awareness	good; project is addition to already completed one.
Comment:	lack of control area; doubt as to rehab.	non-descript 6 story tenement district
Disposition:	Reject	Open for possible later acceptance (low priority)

CHECKLIST ON CRITERIA FOR PROJECT SELECTION

Project Name & Location:	North Park R-23 Long Beach, L.I., N.Y.	
Land Uses:	Predom. resi.	
Gross Acres:	37.6	
# Families:	200	
# Structures:	138	
Type Structures:		
Reuse proposal:	resi & comm	
S & P Approval:	6/1958	
L & G Approval:	3/1962	
Interview with Official:	with U.R.A. field representative	
Secure boundary map; site inspect:	o.k.	
Community awareness of renewal activity:	Is only project in city with no other renewal activity	
Comment:		
Disposition:	Open; but looks doubtful (low priority)	

VIII. APPENDIX (CONTINUED)

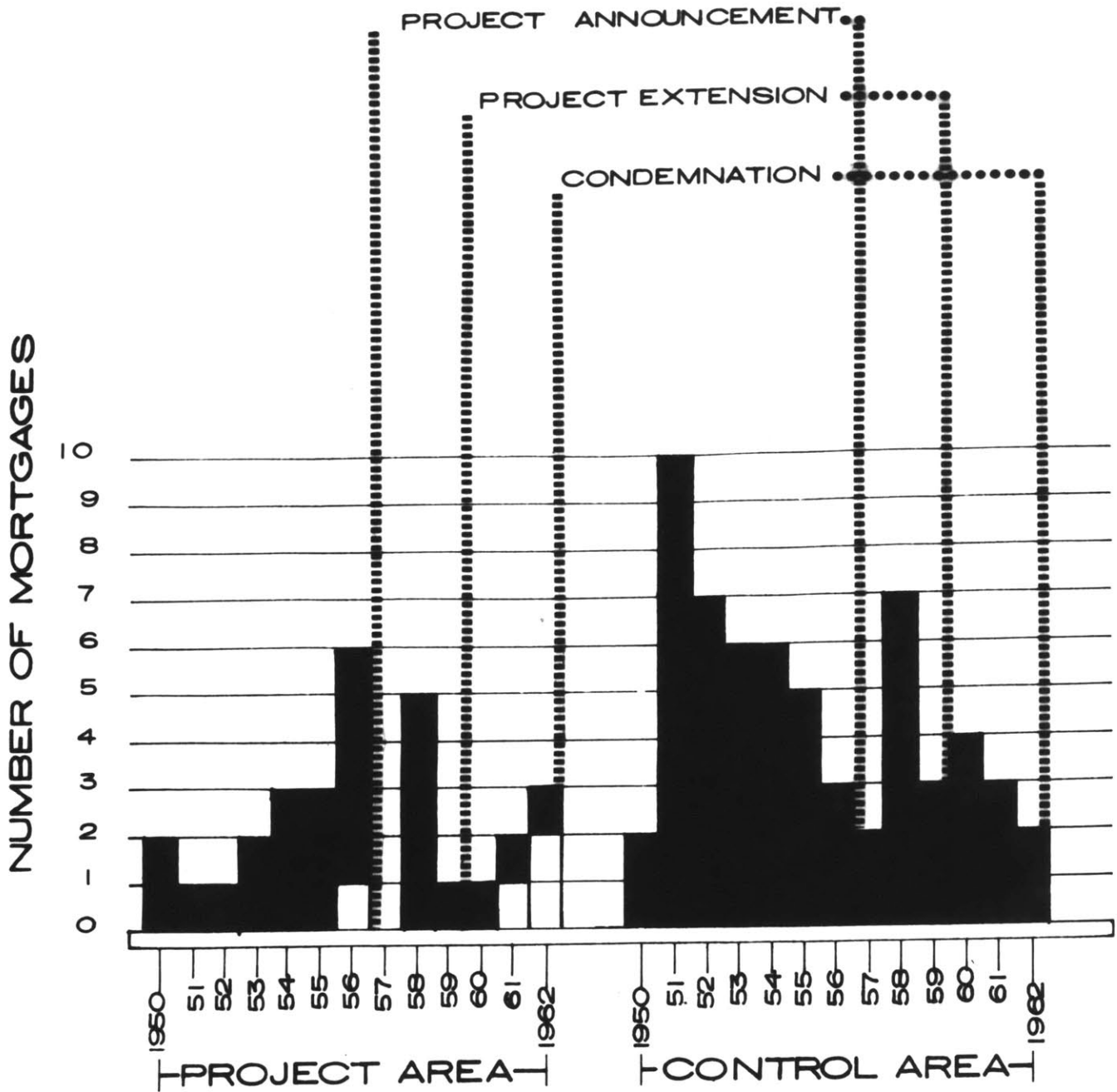
B. Refinancing Activity in Cadman Plaza.

Refinancing activity for Cadman Plaza is shown on Chart 7, following page. These findings were not given serious weight because of uncertainties in the data interpretation. Apparently some level of refinancing continued beyond the project announcement date.

REFINANCING ACTIVITY

CHART 7

CADMAN PLAZA RENEWAL AREA · JAN, 1950 — DEC, 1962



□ IN EXTENDED PROJECT AREA

SOURCE: BROOKLYN REAL ESTATE REGISTER

IX. BIBLIOGRAPHY

A. Data source for Improvement & New Construction Activity:

Docket of New Construction and Building Notices, Borough Clerks Office, Municipal Building, Brooklyn, N.Y.

Building Permit Records, Building Department, City Hall, Elizabeth, New Jersey

B. Data source for Occupancy Determination:

Census of Housing: 1960 Vol III, City Blocks. Series HC (3), No. 274, Brooklyn Borough, New York City. U.S. Bureau of the Census.

Census of Housing: 1960 Vol III, City Blocks. Series HC (3), No. 246, Elizabeth, New Jersey. U. S. Bureau of the Census.

Price & Lee City Directories for Elizabeth, New Jersey, 1953, 1959, and 1963.

Cadman Plaza retail space survey, field survey during November, 1962.

C. Data source for Real Estate Market Activity:

Brooklyn Real Estate Register, 356 Fulton Street, Brooklyn, N.Y. Published by Real Estate Register, Inc. (monthly).

Union County Realty Reporter, 359 Union Street, Hackensack, N.J. Published by Records Publishing Co., P.O. Box 218, Hackensack, N.J. (weekly).

D. Articles, Reports and Newspaper Sources:

Brooklyn Heights Press, published weekly, 151 Montague Street, Brooklyn, N.Y. Selected issues from 1950 through 1962.

Elizabeth Daily Journal, Elizabeth, New Jersey. Selected issues from 1950 through 1962.

Meyer, Eric W. "The Cadman Plaza Plan: A Case Study in the Evolution of a Planning Concept" in Pratt Planning Papers, Vol 2 No 2, July 1963 (Publication of the Planning Department, School of Architecture, Pratt Institute, Brooklyn)

Cadman Plaza, report of April 20, 1959 by the New York City Committee on Slum Clearance.

Calendar No. 3, May 2, 1962, New York City Planning Commission, Designation of the Cadman Plaza Area.

Statement, March 20, 1962 by Housing & Redevelopment Board of New York City concerning final project report for Cadman Plaza Urban Renewal Area.

Pearl Street Urban Renewal Project Plan Report of April 1959 by Candeub & Associates, City Planning & Urban Renewal Consultants, 32 Green Street, Newark, N.J.

E. Journals:

Note, "Eminent Domain Valuations in an Age of Redevelopment: Incidental Losses," 67 Yale Law Journal 67 (1957).

Note, "Urban Renewal: Problems of Eliminating & Preventing Urban Deterioration," 72 Harvard Law Review 504 (1959).

Note, "Techniques for Preserving Open Spaces," 75 Harvard Law Review 1622 (1962).

Note, "Condemnation Of Future Interests," 43 Iowa Law Review, 241 (1958)

Law & Contemporary Problems: Urban Renewal Part I & II, Vols XXV & XXVI, Autumn 1960 & Winter 1961, Duke University School of Law.