Rethinking Government Participation in Urban Renewal: Neighborhood Revitalization in New Haven

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Eisenhower was surly and uncommunicative. He said, "For Chrissakes, you got half the Goddamn United States Treasury in New Haven! Why should we give you any more money?"

—Mayor Richard Lee‡

During the bleak winter of 1993, residents of New Haven twice heard the often-rung death knell of their struggling downtown as two long-time denizens separately announced their departures from the area. The New Haven Senators, the most recent incarnation of the city’s minor league professional hockey franchise, announced in February that they would be leaving the city. A few weeks later, Macy’s—the last department store in downtown New Haven—announced it would be closing its doors permanently the following June. Although local commentators disagreed about whom to blame for the departure of these two mainstays, most agreed on one thing: New Haven’s city government could have done more to prevent the losses.

The City? To those schooled in the dominant American ideology of free-market capitalism, it seems odd that the city government would be engaged in the enterprise of attracting and retaining athletic teams and merchants. City government traditionally exists to provide those services that private businesses cannot supply efficiently—things such as roads, police and fire protection, and

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1. Interview with Richard C. Lee, Mayor of the City of New Haven 1954-69, in New Haven, Conn. (Jan. 29, 1993) (discussing his efforts to persuade President Eisenhower to offer federal aid to keep New Haven-based Sargent Manufacturing Company from moving to Kentucky).


5. Those who balk at the City’s attempts to retain athletic teams and department stores would doubtless abjure its efforts to attract them to New Haven in the first place. See Cavanaugh, supra note 2, at 20 (discussing efforts to attract hockey team); Mark Zaretsky, Mayors past and present reflect on store’s demise, NEW HAVEN REG., Mar. 7, 1993, at F1, F8 (discussing Mayor Lee’s maneuvering to attract Macy’s to New Haven).
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perhaps the occasional park. However, events of this century have worked to reverse this presumption of government noninvolvement. During the Great Depression, the architects of the New Deal convinced many Americans that government could, and should, take a more active role in solving social and economic ills. The postwar decline of American cities offered a new opportunity to test the ability of government to solve problems. Enlightened officials at all levels of government cooperated to find a solution to America's urban woes, and thus created the great urban renewal projects of the 1950s and 1960s. In the wake of these projects, voters—as well as many commercial interests—came to expect government participation in redevelopment, from building malls and affordable housing to attracting new business.

While this short history may explain why government participates in urban redevelopment, it does not necessarily justify such participation. What should government do to promote redevelopment? A full examination of this question could fill (and has filled) volumes. This Article undertakes a more modest inquiry, focusing on one small corner of the expansive subject of government-assisted municipal redevelopment: What should be the government's role in neighborhood revitalization? This Article examines two recent neighborhood redevelopment efforts in New Haven, Connecticut, in an attempt to answer that question.

The two projects studied herein are known locally as "Ninth Square" and "Upper State Street." The Ninth Square project area covers twenty-three acres of land over four city blocks in southeast New Haven. The first phase of redevelopment will furnish 335 residential units totalling 292,383 square feet as well as 49,000 square feet of commercial space. The Upper State Street


7. This presumption of municipal noninvolvement is itself of relatively recent vintage. See Babcock, supra note 6, at 959-64 (discussing how, from the 18th century until the late 19th century, municipalities subsidized some businesses and owned others outright); Marc V. Levine, The Politics of Partnership: Urban Redevelopment Since 1945, in UNEQUAL PARTNERSHIPS 12, 14-16 (Gregory D. Squires ed., 1986) (discussing municipal participation in private business throughout 19th century, increasing emphasis on limiting role of city government, and late-20th century reemergence of public involvement).


9. See Frieden, supra note 6, at 47.


11. McCormack Baron & Associates, The Ninth Square (Jan. 11, 1993) (on file with author) [hereinafter 1993 Financing Summary]; Anna Barber, Ninth Square Financial Summary 1 (Feb. 17, 1994) (unpublished manuscript, on file with author). The residential units will consist of studio, one-bedroom and two-bedroom apartments. A second phase of redevelopment will add another 126 residential units and another 28,600 square feet of ground-floor commercial space. Id. See generally infra notes 93-96 and accompanying text.
area lies on slightly more than twenty-three acres of land along an eight-block strip in northeast New Haven. The first phase of redevelopment there provided seventy-four apartments totalling 61,565 square feet, and renovated 43,437 square feet of commercial space. The two neighborhoods are separated geographically by a distance of less than a mile (see Map 1), but in terms of government participation and style of redevelopment, they are nearly polar opposites. The developers of Ninth Square have received financial assistance (as well as planning input) from municipal, state, and federal governments. After nearly a decade of false starts, official groundbreaking on the project took place on May 13, 1993. In contrast, small property owners completed the first phase of redevelopment in New Haven’s Upper State Street area during the first few years of the 1980s, with minimal government funding and involvement.

Given the pervasiveness and persistence of government involvement in urban redevelopment, the most important question is not whether the City should be involved, but the terms on which it should distribute its largesse. Comparison of the two redevelopment projects helps illustrate some factors municipalities should consider when rethinking neighborhood redevelopment for the late 1990s. In particular, this Article examines some of the implications of the “grain,” or unit, of redevelopment for the success of a project. The unit of renewal in a “coarse-grained” development is the neighborhood: An entire area is redeveloped by one entity or group of entities according to a single master plan. The unit of renewal in a “fine-grained” development is the building: Individual developers undertake the redevelopment of single structures within an area, independently arranging the financing and rehabilitation of each structure, with minimal formal coordination. After comparing the coarse-grained Ninth Square project with the fine-grained Upper State Street

12. See National Register of Historic Places Inventory: Nomination Form for Upper State Street Historic District 6-2 (Jan. 5, 1984) [hereinafter State Street Nomination]. The area today is actually slightly larger. The 23-acre figure excluded some vacant lots that have since been redeveloped. See id. at 7-1. For example, this figure excludes the lot of a former sausage factory, which has since been converted into condominiums. See infra note 244 and accompanying text. Upper State Street is generally considered to consist of all of State Street between Bradley Street (and the I-91 Trumbull Street Interchange) in the south and the Mill River (and the I-91 Mill River overpass) in the north as well as immediately adjoining areas on certain side streets (including Clark, East, Edwards, Eld, Mechanic, and Pearl Streets). See State Street Nomination at 6-2; see also NEW HAVEN CITY PLAN DEP’T, UPPER STATE STREET NEIGHBORHOOD COMMERCIAL REVITALIZATION PLAN (May 1980).

13. Figures on Neighborhood Commercial Revitalization Program (NCRP) participation are derived from public records of the NCRP on file with the New Haven State’s Attorney’s Office; square footage figures are derived from records on file with the New Haven Tax Assessor’s Office. Over the entire period of Upper State Street’s redevelopment, a total of 221 apartments contributing 196,493 gross square feet of residential space were renovated, as well as 166,884 gross square feet of commercial space. See generally infra text accompanying notes 245-47. Data for Upper State Street are given in gross square feet, measured from the outside of the building, rather than net square feet, which is measured net of walls. Gross square footage must be used because limitations in the data collected by the tax assessor’s office make it impracticable to calculate net square footage.


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project, this Article concludes that fine-grained redevelopment tends to produce results faster, primarily because fewer participants need approve a given decision. Furthermore, fine-grained redevelopment is not as likely to cause mass dislocations that can result in vacant, blighted neighborhoods.

This comparison is not without limitations. The range of conclusions that can be confidently drawn from only two cases is necessarily limited. Moreover, while the projects are similar in important respects, they also differ in significant ways. The two projects are different in scale: The first phase of redevelopment in Upper State Street was smaller in scale than the first phase of the Ninth Square project. Ninth Square also entailed more new construction, including a nine-story, $14.8 million apartment building. Ninth Square also is closer to New Haven’s downtown business district than is Upper State Street, so the neighborhood is crowded and urban, while Upper State Street borders residential neighborhoods, consisting mostly of single-family residences and houses converted into apartments. While both projects were undertaken during recessions, Ninth Square will debut in a real estate market glutted from a decade of overbuilding.

Yet, in many ways, the two projects are very similar. Both neighborhoods were in similar states of disrepair prior to renovations. Both neighborhoods consist largely of mixed use buildings, structures classified (in the parlance of the New Haven Tax Assessor’s Office) as “appraisal code 404”: rental apartments over street-level commercial space. And while the initial phases of the two projects differ in scope, the modest Upper State Street project was ultimately responsible for reviving a neighborhood the size of Ninth Square, and for generating comparable quantities of apartments and commercial space.

15. See supra text accompanying notes 11 & 13; see also interview with Kathleen Etkin, Project Manager for Ninth Square, McCormack Baron & Associates, in New Haven, Conn. (Jan. 18, 1994). Approximately 20 properties were renovated with City subsidies under the Neighborhood Commercial Revitalization Program. Although the NCRP directly subsidized only commercial development, the facade grants indirectly subsidized the renovation of apartments through exterior renovation of mixed-use buildings. Figures on NCRP participation are derived from public records of the NCRP on file with the New Haven State’s Attorney’s Office; see also Office of Bus. Dev., Neighborhood Commercial Revitalization Program Fact Sheet (Jan. 31, 1990) (on file with author) (23 of 57 eligible properties renovated).

16. The new apartment building will be located at the center of Ninth Square, at the corner of Crown and Orange Streets. Upon completion, this 200,000-square-foot building will provide 188 apartments and street-level retail space. See Pulse: Contracts and Low Bids, ENGINEERING NEWS-REC., Apr. 5, 1993, at 75; Pulse: Contracts and Low Bids, ENGINEERING NEWS-REC., Jan. 25, 1993, at 78.

17. See infra note 34 and accompanying text.

18. See infra notes 60-61 and accompanying text, and notes 176-181 and accompanying text.

19. Upper State Street, like Ninth Square, covers approximately 23 acres of land. See supra text accompanying notes 10 & 12.

20. Buildings renovated in Upper State Street since the NCRP began contribute some 221 apartments totalling 196,493 gross square feet of residential space, as well as 166,884 gross square feet of commercial space. See supra note 13.
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To appreciate the significance of these two projects, it is first necessary to place them in the context of New Haven's experience in urban redevelopment.

I. THE FALL AND RISE OF DOWNTOWN NEW HAVEN

After World War II, New Haven suffered from the same problems that afflicted most older urban areas. It was caught at the intersection of two historic trends: the exodus of its more affluent, primarily white residents to the suburbs; and the influx of relatively poor blacks and Hispanics. Businesses fled the city. Vacancy rates increased and rents fell. Maintenance suffered, and sections of the city became blighted. As the population decreased and property deteriorated, city tax revenues fell, while expenditures on services rose, driven by the swelling numbers of indigents.

Mayor Richard Lee, elected in 1953, initiated an ambitious program of urban renewal to bring people and businesses back to the city center. Over the course of his eight terms as mayor, Lee secured approximately $450 million in federal aid for his projects—more federal money per capita than any other city received—transforming New Haven into "an exciting laboratory for change, a model of urban renewal and a testing ground for the war on poverty." Lee's projects transformed the city. Slums surrounding Oak Street, a few blocks southwest of the future Ninth Square, were levelled. In their place rose new high-rise apartments, a six-lane connector to the interstate system, and new office buildings. The downtown shopping area, immediately west of the future Ninth Square, was transformed with the erection of the Chapel Square Mall, Macy's, and Malley's department store. Immediately south of

21. In 1950, the city of New Haven was home to more than three-fifths of the metropolitan area population; by the early 1980s, it housed less than one-third. The black population of New Haven quadrupled between 1950 and 1970, and the Hispanic population increased considerably after 1970. By 1980, 40-45% of New Haven's population consisted of minorities. Fainstein & Fainstein, supra note 8, at 30; see also Floyd M. Shumway & Richard Hegel, New Haven: A Topographical History, 34 J. NEW HAVEN COLONY HIST. SOC'Y, Spring 1988, at 3, 50. In 1970, the median income of black families was only 75% of the median for all families in New Haven. The economic position of New Haven's minorities has eroded further in recent years. See Fainstein & Fainstein, supra note 8, at 30-32.

22. See Fainstein & Fainstein, supra note 8, at 32-34.

23. See, e.g., Shumway & Hegel, supra note 21, at 50, 52.

24. See, e.g., id. at 50.


26. George Judson, New Haven's Task: Tying City to Region to Promote Growth, N.Y. TIMES, June 1, 1993, at A1; see also Mufson, supra note 25, at H2. See generally Fainstein & Fainstein, supra note 8, at 29-55.

27. Many of these plans were formulated under the administration of Lee's predecessor, Mayor William C. Celentano (1945-53). Mayor Lee, however, procured the funding for them. Fainstein & Fainstein, supra note 8, at 37-38.
Ninth Square stood the new Knights of Columbus world headquarters and the new New Haven Coliseum. Older homes in the Wooster Square area, a few blocks east of Ninth Square, were renovated with substantial City assistance. But as federal expenditures in Vietnam rose and distaste for the perceived excesses of urban renewal spread, federal assistance for the massive projects ceased. When Mayor Lee stepped down in 1969, it was the end of an era in urban renewal.

At the outset of the 1980s, long after the big projects had ended, New Haven's urban problems remained. Much of the city's core remained blighted. In an era of New Federalism and chronic budget deficits, New Haven officials received little help from the once-activist federal bureaucracy. The city government found it had to be more resourceful, and began using more state and local funding—as well as a few federal Urban Development Action

28. See id. at 41-46.
29. For a succinct overview of this era of urban renewal, see BERNARD J. FRIEDEN & LYNNE B. SAGALYN, DOWNTOWN, INC.: HOW AMERICA REBUILDS CITIES 16-60 (1989). Early renewal programs were marked by a disproportionate impact on neighborhoods populated by minorities. Fully 63% of the people displaced by urban renewal projects in the 1950s and 1960s were non-whites. Id. at 28. The costs associated with displacement typically were borne by those displaced. The federal government did not often pay relocation expenses prior to the passage of the Uniform Real Property Acquisition Policy Act of 1970, a federal law requiring compensation for those displaced by government-sponsored projects. See id. at 29; see also Uniform Real Property Acquisition Policy Act of 1970, Pub. L. No. 91-646, § 101, 84 Stat. 1894 (codified as amended at 42 U.S.C. §§ 4601-4638 (1988)). Moreover, the costs did not bring proportional benefits to the poor populations that suffered most. For example, New Haven cleared approximately 6500 low-income households but constructed only 951 units to replace them. FRIEDEN & SAGALYN, supra, at 52. The disproportionate impact of urban renewal policies on poor and minority populations contributed significantly to popular distaste for such programs. See, e.g., Shumway & Hegel, supra note 21, at 52.
30. Fainstein & Fainstein, supra note 8, at 44 (stating that downtown area foundering); Mufson, supra note 25 (observing that areas immediately south of Yale University and two blocks west of Ninth Square contained many vacant or abandoned buildings).

This Article concentrates primarily on downtown New Haven. However, New Haven's urban woes spread far beyond the downtown area into many formerly working class neighborhoods. See Judson, supra note 26, at A1; Tracie Rzohn, '60's Dream of Renewal Fades With Time, N.Y. TIMES, Jan. 11, 1981, § 23, at 1.
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Grants (UDAGs)\textsuperscript{32}—as incentives to attract private sector funding to accomplish its urban policy goals.\textsuperscript{33}

City development agencies undertook a large number of projects in the 1980s. Municipal government encouraged (and subsidized) real estate investment; consequently New Haven, like many other cities across the nation, witnessed a boom in the construction of office space during that period.\textsuperscript{34} The City also undertook more unconventional projects. For example, the City, along with Yale University and several small businesses, established Science Park, which it touts as a "business incubator park."\textsuperscript{35} The City, again with the cooperation of Yale, lured the Volvo International Tennis Tournament.

\textsuperscript{32} Urban Development Action Grants first became available under the Carter Administration. The federal government doled out about $4.6 billion in UDAGs to public-private joint ventures during the life of the program, supplementing approximately $29 billion in private money. See Kirstin Downey, \textit{UDAG Program's Legacy: A Pork Barrel or Progress? Reactions Split on Death of Urban-Grant Program}, \textit{WASH. POST}, July 30, 1988, at E1. New Haven received a total of $40.6 million in UDAGs. Congress voted to scrap the program in 1988. See Daniel Weiss, \textit{UDAGs killed}, States News Service, June 22, 1988, available in LEXIS, News library, Arcnews file. Although Congress cancelled the program, funds allocated prior to cancellation that are not yet dispersed continue to be "in the pipeline." These funds may be dispersed years after the program's cancellation, when the earmarked projects finally are commenced.

\textsuperscript{33} John Daniels, Mayor of New Haven between 1990 and 1993, regretted having to use more local resources towards redevelopment, but saw no alternative: "when Washington turns its back on cities . . . where does the mayor go? Under our taxing structure, he has to turn to the property owners." Polk, \textit{supra} note 31.

Many commentators have discussed the techniques employed by municipalities to assist renewal projects. These include both traditional techniques (loans, grants, acquisition and condemnation assistance), and novel financing assistance (tax abatements, tax-increment financing, industrial development bonds). See, e.g., Rita J. Bamberger & David W. Parham, \textit{Leveraging Amenity Infrastructure: Indianapolis’s Economic Development Strategy}, \textit{URB. LAND}, Nov. 1984, at 12-18; Linda Goodman & Janet Nutting, \textit{A Tale of Four Cities: Investment Activity in “Dying” Downtowns}, \textit{URB. LAND}, Mar. 1985, at 32-33 (considering Cleveland, Milwaukee, Detroit and Indianapolis); Malloy, \textit{supra} note 31, at 74-81 (discussing various cofinancing and incentive programs).

\textsuperscript{34} Much of the new office space was built along Church Street north of Ninth Square: Connecticut Financial Center, the New Haven Savings Bank Building, Audubon Court, Government Center, Whitney Grove Square, and One Century Tower (just to name a few) all went up during the 1980s; the Exchange building was renovated during the same period. On nearby State Street, just south of the Upper State Street district, the Granite Square building was constructed. Long Wharf Maritime Center was built near New Haven Harbor. All received government subsidies of one sort or another. For example, the City sold the lot for Audubon Court for a dollar per square foot. See Andree Brooks, \textit{About Real Estate: Artistic Flair in New Haven Housing}, \textit{N.Y. TIMES}, Nov. 18, 1988, at A30. Connecticut Financial Center received a $10.5 million UDAG from the federal government, see Shawn G. Kennedy, \textit{A Municipal Complex for New Haven}, \textit{N.Y. TIMES}, Apr. 6, 1988, at D28, while Whitney Grove Square received a $4 million UDAG. See \textit{New Haven’s Comeback}, \textit{BUS. TIMES}, Aug. 1985, at 4. All these developments are experiencing difficulties renting space at rates close to those projected during planning. Vacancy rates for office space in downtown New Haven are near 30%, far above the 17% national average. See Richard Behar, \textit{The Great Office Giveaway}, \textit{TIME}, Mar. 4, 1991, at 64; Eleanor Charles, \textit{In New Haven, a Struggle for Recovery}, \textit{N.Y. TIMES}, July 5, 1992, § 10, at 9. New Haven is just one example of a national problem in this regard; cities nationwide are experiencing high vacancy rates as a result of overbuilding during the 1980s. See FDIC Chairman Taylor Preaches Caution in Discussing Outlook for Banks, the \textit{BIF}, \textit{FDIC WATCH}, June 15, 1992, at 5, available in LEXIS, News library, Allnews file (excerpting testimony of FDIC Chairman William Taylor before Senate Banking Committee); Jeanne B. Finder, \textit{Building Slump is Seen as Brake On a Recovery}, \textit{N.Y. TIMES}, Aug. 22, 1993, § 1, at 1.

away from Stratton Mountain, Vermont to New Haven. The City also engaged in a flurry of activity in an attempt to attract high-profile sporting events, such as the Special Olympics and the World Cup soccer championships. More recently, the City succeeded in attracting a minor league baseball team, dubbed the New Haven Ravens. The City also has worked to attract and maintain manufacturing jobs in New Haven. Last year, the U.S. Repeating Arms Company broke ground on a new factory in a poor section of New Haven, spurred by the promise of tax abatements upon its completion. The City is currently pushing to transform a twenty-eight-acre vacant lot a few blocks southwest of Ninth Square into a biotechnology park. The city government's willingness to participate in joint public-private development projects prompted Virginia Mayer, spokesperson for the National League of Cities, to bestow Virginia Mayer, spokesperson for the National League of Cities, to bestow it "an entrepreneurial city."
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For the past four decades, New Haven has been in the vanguard of a growing movement among municipalities to offer public funds to developers and companies as inducements to attract business.\textsuperscript{42} This practice resembles a sort of domestic "mercantilism," the currency of which is prime office space, specialty retail shops, amenities, attractions, and, ultimately, jobs. This practice of offering publicly funded inducements to private firms has gained currency among the states.\textsuperscript{43} Many have questioned whether such efforts are worthwhile; the \textit{New York Times} has commented that there is "general agreement that unbridled rivalry sometimes encourages cities to make such huge concessions, in taxes and other benefits, that the winner often ends up losing more money than it can possibly recoup."\textsuperscript{44}

The Ninth Square project was conceived as part of the City's overall scheme to attract people and business to New Haven's urban core. Examining the history of the project and its financing is illustrative of New Haven's efforts as an entrepreneurial city government.

\textsuperscript{42} The City of New Haven has been involved in such endeavors since at least the late 1950s. \textit{See} Fainstein & Fainstein, \textit{supra} note 8, at 41 (reporting use in late 1950s and early 1960s of inducements to attract investors downtown); \textit{id.} at 45 (discussing municipal cooperation with manufacturers to establish industrial park near New Haven Harbor in early 1960s); \textit{id.} at 61-63 (noting municipal use of federal funding to subsidize business during the 1970s); interview with Richard C. Lee, \textit{supra} note 1 (discussing Mayor Lee's use of public funds as incentives to keep Sargent Manufacturing from leaving New Haven); Fainstein & Fainstein, \textit{supra} note 8, at 29-55 (describing cooperative efforts with developers).

New Haven has been an "entrepreneurial city" virtually since it was founded. In the late 1650s, it subsidized the establishment of a furnace on the eastern edge of town to process iron ore found in bogs between New Haven and Branford. However, John Winthrop, one of the project's principals, abandoned New Haven to become the governor of the Connecticut River Colony. Unexpected costs began to appear, and for the remainder of its short life (which lasted until the early 1660s), the furnace was "more of a liability than an asset." Thomas J. Farnham, \textit{New Haven, 1638 to 1690, in NEW HAVEN: AN ILLUSTRATED HISTORY} 16-17 (Floyd Shumway & Richard Hegel eds., 1981). The City of New Haven also gave substantial financial assistance to the New Haven, Middletown, and Willimantic Railroad Co., chartered in 1867. However, the railroad failed and in 1875 it was sold under foreclosure. Shumway & Hegel, \textit{supra} note 21, at 46.


II. NINTH SQUARE: A STUDY

Q: Do you think Ninth Square actually will be built?
A: At the rate things are moving along, maybe they might get it built in the next century.

—Mary Gonsalves, a New Haven resident

A. Background

1. Early History

New Haven was probably the first settlement in British North America to be laid out in an organized fashion. The design for the city, drawn up shortly after New Haven was founded in 1638, described a large square, half a mile on a side, bounded by four streets. The plan further subdivided the city into nine equal squares. The eight residential squares were never given official names. Ninth Square, so called because it is the last of the original nine squares to be redeveloped, is located in the southeast corner of the original city. Ninth Square covers approximately twenty-three acres and consists of four square city blocks.

From the earliest days of the colony, Ninth Square was the commercial center of the city. Throughout the colonial period and into the first decade

46. Shumway & Hegel, supra note 21, at 13. New Haven has a long history of municipal planning. Grove Street Cemetery, just north of the Yale campus and several blocks northwest of Ninth Square, was the first regularly planned and laid out cemetery in the United States. Id. at 20. In addition, Yale may have had the first planned campus in the United States. Id. at 21.
47. The four sides of the square are currently bounded by York, Grove, George, and State Streets. Id. at 13. There are various theories for why the colonists chose this form. One theory holds that the design was based on the layout of a Roman military encampment used by Julius Caesar. A second hypothesis is that the design followed a biblical guideline or model. Id. at 13-14. Although the design is commonly referred to as "the Brockett plan," after John Brockett, one of several land surveyors among the original settlers, the identity of the actual author of the plan is unknown. Id. at 13; see also Farnham, supra note 42, at 12.
48. Shumway & Hegel, supra note 21, at 13. The large square of the city was subdivided into nine smaller squares by what are now College, Church, Chapel, and Elm Streets. At the time of the plan, the streets were not given names. Over time, New Haveners developed descriptive terms to identify particular spots, such as "Cutler's Corner," identifying the intersection of today's Church and Chapel streets. There were no official street designations until 1784, when the municipal government named 21 streets. Id. at 23.
49. The center square, now known as the Green, was set aside as a marketplace. In the early years, certain sections of New Haven were called the Hertfirdshire, Kent, London, and Yorkshire quarters because of the extraction of many of their occupants. Id. at 15.
50. The area now known as "Ninth Square" is currently bounded by Chapel, State, George, and Church Streets. The area was first referred to as "Ninth Square" in the late 1970s. Interview with Kathleen Etkin, Project Manager for Ninth Square, McCormack Baron & Associates, in New Haven, Conn. (Jan. 15, 1993).
51. See Shumway & Hegel, supra note 21, at 18-19; National Register of Historic Places Inventory—Nomination Form for Ninth Square Historic District 8-6 (Oct. 31, 1983) [hereinafter Ninth Square Nomination].

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of the eighteenth century, the city’s economy was centered around New Haven Harbor and was based in large part on trade through the port. Ninth Square, readily accessible from the harbor via the East Creek, flourished.\(^5\) By 1770, the city marketplace had moved south from the Green to the southwest corner of Ninth Square.\(^5\) The area experienced dramatic growth between 1800 and 1820 because of its location between the old town and the emerging new residential center a few blocks to the east, around what is now Wooster Square.\(^4\) The opening of the Farmington Canal in 1828, which ran along Ninth Square’s east side, brought additional business to the already bustling neighborhood.\(^5\)

The area experienced little additional growth until the advent of the railroad brought new business to the Ninth Square area. By the 1850s, several railroad lines ran to the east of State Street, and the horse-drawn railroad (and, later, streetcar) lines all converged at the intersection that defined the northwest corner of Ninth Square.\(^5\) From the 1880s until World War II, this intersection was “the crossroads of the city and the very heart of the commercial zone.”\(^5\) During the decades after the Civil War, the east side of Ninth Square filled up with commercial buildings and became the city’s primary retail and wholesale strip.\(^5\) The area remained among the most active and densely settled in New Haven until after the Second World War, when many businesses and residents departed for the suburbs.\(^5\) Ninth Square avoided the wrecking ball of urban renewal during the 1950s and 1960s, but as demand for commercial and residential space in the area dwindled, rents fell, maintenance declined, and many buildings in the area became derelict.\(^6\) In 1983, one City staffer observed that Ninth Square had long been downtown New Haven’s most neglected area.\(^6\)

\(^{52}\) See Shumway & Hegel, supra note 21, at 18-19. East Creek has long since been filled.
\(^{53}\) \textit{Id.} at 19.
\(^{54}\) \textit{Id.} at 31.
\(^{55}\) Ninth Square Nomination, supra note 51, at 8-6 to 8-7.
\(^{56}\) Shumway & Hegel, supra note 21, at 36.
\(^{57}\) \textit{Id.} at 41. \textit{See also} Robert J. Leeney, \textit{Ninth Square was once a place to be}, \textit{NEW HAVEN REG.}, Sept. 21, 1991, at 10.
\(^{58}\) Shumway & Hegel, supra note 21, at 41; Ninth Square Nomination, supra note 51, at 8-8.
\(^{60}\) Interview with Kathleen Etkin, \textit{supra} note 50. Etkin estimates that the use of the buildings in the area had been “uneconomic for a long time,” bringing in rents of only two to seven dollars per square foot, when other downtown areas commanded rents of $12-13 per square foot. \textit{Id.} One building on Chapel Street stood vacant for nearly a decade after 1976. \textit{See} Janet Kipphut, \textit{Expert sees no end to city renaissance}, \textit{NEW HAVEN REG.}, Sept. 9, 1984, at F1.
2. Early Redevelopment Efforts

The plan to rejuvenate Ninth Square dates from late 1982.62 The contemporaneous purchase of the foundering Chapel Square Mall (which borders Ninth Square on the west) by the Rouse Company and the revitalization of a section of nearby College Street (dubbed “Shubert Square”) and adjoining areas created a favorable environment for redevelopment in Ninth Square.63 Local artists had begun to colonize the area, “mak[ing the] neighborhood liveable” and prestigious.64 By late 1983, area property owners, merchants, and City planners envisioned Ninth Square as a quarter of farmers’ markets, cobblestones, roomy artists’ lofts, and pedestrian malls.65 Many soothsayers then expected New Haven to become the next Stamford, home to tax-expatriate companies from New York City as well as local startup companies. Developers predicted an increasing need for rental housing and prime office space to accommodate the expected influx of business.66

The Ninth Square Association was formed as a coalition of long-time area property owners who were interested in drawing new customers downtown,67 and more recently arrived development entrepreneurs who saw Ninth Square as an opportunity to profit from rising popular interest in historic renovation.68 The Association worked to facilitate members’ renovation efforts. Along with the New Haven Preservation Trust, the Association sponsored research into the original appearance of buildings in the district.69 The Association successfully campaigned to have the neighborhood designated a historic district on the National Register of Historic Places, thus making a generous federal tax credit available for renovation efforts in the area.70

62. Shumway & Hegel, supra note 21, at 53.
63. See Chatman, supra note 61. Recent efforts at revitalization in other urban areas of New Haven, notably Upper State Street, also served to pique developers’ interest. See Section III infra.
64. Janet Koch, Ninth Square levy OK’d, NEW HAVEN REG., June 18, 1985, at 13 (quoting Alderman Steven G. Mednick); see also Jane Adams, Artists worried that Ninth Square plans may force them out, NEW HAVEN JOURNAL-COURIER, July 9, 1985, at 9.
65. Petraiuolo, supra note 10, at 1.
66. See, e.g., Kipphut, supra note 60 (reporting that real estate expert Henry Harrison was predicting dramatic elevation in office space rents because of New Haven’s position on the fringe of New York City’s expansion); Mark McCain, New Offices for New Haven: Developers Gamble on a Corporate Drift to the East, N.Y. TIMES, Aug. 23, 1987, § 8, at 23; Edward Petraiuolo III, Rental housing is first goal, NEW HAVEN REG., June 6, 1984, at F1.
68. See Jackey Gold, State OKs temporary certificate for proposed Ninth Square bank, NEW HAVEN REG., Mar. 21, 1985, at 27.
69. See Edward Petraiuolo III, Ninth Square building facades will get face lift, NEW HAVEN REG., Nov. 22, 1985, at 48.
70. The neighborhood was granted historic status on May 3, 1984. National Register of Historic Places—Nomination Form for Ninth Square Historic District, Supplementary Listing Record, Aug. 11, 1987 (on file with author). Because Association members had the foresight to push for historic status early in the renovation process, area property owners became eligible for federal investment tax credits prior
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tion persuaded the City to offer facade renovation subsidies. Stan Mulvihill, then president of the Association, explored the possibility of hiring a single contractor to perform all the renovation work in the neighborhood, in the hopes of lowering costs. The Association also was instrumental in establishing a "special services district" in the area, under which merchants paid, in addition to property taxes, a fee to provide for added security, garbage collection, public improvements, and promotions.

The promise of redevelopment drew new investors to the area. The New Haven Historic Limited Partnership (HLP) formed in 1984 to redevelop properties in Ninth Square. HLP acquired its first property in August 1984 for $500,000. HLP intended to direct redevelopment of the entire area, and envisioned gradual redevelopment without mass displacement. By 1985, however, it was clear that HLP would be unable to raise sufficient capital on its own to finance the entire Ninth Square project. Moreover, the climate for such developments changed drastically with the passage of the Tax Reform Act of 1986. The Act substantially diminished the attractiveness of HLP's

to renewal. In other areas of New Haven, such as in the Upper State Street neighborhood, historic status was pursued only after renovations were complete. See Petraiuolo, supra note 69. The federal program made taxpayers eligible for a 25% federal tax credit for amounts invested in designated historic properties. See 26 U.S.C. § 46(b)(4) (Supp. Ill 1985). The Tax Reform Act of 1986 decreased the rehabilitation tax credit. See infra note 78.

71. The City increased the subsidy in late 1985, matching two dollars of private investment with one dollar of public funds, up to a maximum of $15,000 per structure. Previously, the City provided one dollar of subsidy for three dollars of private expenditure, up to a maximum of $7500. Owners of about half the buildings eligible for the subsidy had signed up for it as of late 1985. See Petraiuolo, supra note 69, at 48.

72. Prior to becoming president of the Association, Stan Mulvihill worked on the staff of the Downtown Council. He has since moved back to his native St. Louis, and now works for the St. Louis Development Corporation. Interview with Kathleen Etkin, Project Manager for Ninth Square, McCormack Baron & Associates, in New Haven, Conn. (Apr. 30, 1993).

73. Ninth Square property owners voted overwhelmingly in May 1985 in favor of making the area a special services district. Property owners OK taxing district for Ninth Square, NEW HAVEN REG., May 1, 1985, at 23 (reporting results of vote: 77.5% of property owners voted in favor of special services district, 3.1% voted against, 19.4% did not vote); see also Petraiuolo, supra note 66 (discussing purposes of services district). Within a month, the Board of Aldermen voted to approve. Janet Koch, Ninth Square levy OK'd, NEW HAVEN REG., June 18, 1985, at 13.

74. The partnership only completed one syndication, which raised about $400,000 to be used towards planning Ninth Square redevelopment. The partnership raised funds from affluent area professionals and businessmen. Interview with Kathleen Etkin, supra note 72.

75. Kipphut, supra note 60, at F1. In November 1984, the partnership also bought the property at 770 Chapel Street for $1.6 million. Edward Petraiuolo III, Renovation will strip building’s facade, NEW HAVEN REG., Nov. 11, 1984, at F1.

76. This was reflected in the promotional efforts of merchants in the district beginning in April 1985. The Ninth Square Association put up banners around the district as the first step in a planned series of major promotional activities by merchants to draw new customers into the area. Edward Petraiuolo III, Ninth Square gets energy grant, NEW HAVEN REG., Apr. 9, 1985, at 37.

77. See Steve Hamm, Small fry forge ahead to develop Ninth Square, NEW HAVEN REG., Aug. 2, 1987, at F1; interview with Kathleen Etkin, supra note 50. Although HLP did not oversee redevelopment of the area, it continued to participate. HLP redeveloped the 770 Chapel Street building pursuant to a parcel development agreement with the developers of Ninth Square. Interview with Kathleen Etkin, supra note 72.
project by lowering the tax credit for historic rehabilitation and reducing the availability of passive loss deductions.\textsuperscript{78} Simultaneously, Congress introduced a new investment tax credit for low-income housing.\textsuperscript{79}

Leaders of the Ninth Square Association began to cast around for someone to pick up the torch of redevelopment from HLP. Stan Mulvihill knew of a firm specializing in urban redevelopment in his native St. Louis, McCormack Baron & Associates (MBA).\textsuperscript{80} MBA seemed to be an especially good candidate for undertaking this project: It was well suited to take advantage of the new low-income housing tax credit because of its involvement in a similar project in Kansas City.\textsuperscript{81} Mulvihill invited MBA to take a look at the project. MBA concluded that the neighborhood had promise, bought out most of HLP's interests in the area, and began negotiations with the City to secure agreements it saw as necessary to complete the development.\textsuperscript{82} By early 1986, MBA and the City were working together to submit a proposal for an Urban Development Action Grant from the federal government.\textsuperscript{83} Not surprisingly, the change in the tax code left its mark on the project. Although the basic concept

\textsuperscript{78} See Tax Reform Act of 1986, Pub. L. 99-514, § 251, 100 Stat. 2085, 2183-84 (codified at 26 U.S.C. §§ 46(b)(4)(A), 48(g)(1)(B) (1988)). In addition, taxpayers claiming the deduction were required to reduce their depreciable basis in the property by the entire amount of the tax credit; prior to the change, taxpayers were required to reduce the basis by only one-half the credit. See 26 U.S.C. § 49(d)(1) (1988). A number of other conditions were also imposed. See Linda J. Bozung & M. Randall McRoberts, \textit{Land Use, Planning, and Zoning in 1987: A National Survey}, 19 URB. LAW. 899, 920-23 (1987); Deborah E. Eisenstadt & Peter Giroux, \textit{Real Estate Now Subject to At-Risk Rules; Rehab Credit Reduced by Tax Reform Act}, 15 TAX'N FOR LAW. 242 (1987). The tax change had a substantial impact on investment in historic rehabilitation. A 1989 study found that projects taking advantage of the historic rehabilitation tax credit were down 43% from a year earlier, falling from 1931 projects to 1092. More than 3200 projects were reported in 1985 and 3100 in 1986. Total investment fell from $1.1 billion in fiscal year 1987 to $866 million in fiscal year 1988, a drop of more than 20%. See Richard J. Roddewig, \textit{Recent Developments in Land Use, Planning and Zoning}, 21 URB. LAW. 769, 821 (1989); Thomas L. Waite, \textit{Tax Reform Slowing Historic Rehabilitation}, N.Y. TIMES, Dec. 25, 1988, § 10, at 9.

\textsuperscript{79} See Tax Reform Act of 1986, Pub. L. 99-514, § 252, 100 Stat. 2085, 2189-2208 (codified at 26 U.S.C. § 42 (1988)). The credit provides investors with a tax credit in the amount of 70% of the eligible basis of a new building or substantial rehabilitation of an existing building. The credit is taken at 9% per year over 10 years. In addition, a credit is also given for 30% of the acquisition basis, taken at 4% per year over 10 years. See 26 U.S.C. § 42; see also Frank A. Racaniello, Note, \textit{Extending the Low-Income Housing Tax Credit: An Empirical Analysis}, 22 RUTGERS L.J. 753 (1991). In 1989, the tax code was changed to liberalize the passive loss rules with respect to the low-income housing credit. See Omnibus Budget Reconciliation Act of 1989, Pub. L. 101-239, § 7109(a), 103 Stat. 2106, 2322 (codified at 26 U.S.C. § 469(i)(3)(c) (Supp. II 1990)); see also \textit{Low-Income Housing Credit is More Attractive after TAMRA}, 17 TAX'N FOR LAW. 360 (1989); Thomas R. Wechter & Daniel L. Kraus, \textit{The Internal Revenue Code's Housing Program: Section 42}, 44 TAX LAW. 375 (1991).

\textsuperscript{80} Interview with Kathleen Etkin, \textit{supra} note 50.


\textsuperscript{82} Interview with Kathleen Etkin, \textit{supra} note 50.

\textsuperscript{83} Id.
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of Ninth Square as a neighborhood of apartments over storefronts remained unchanged, MBA planned to market the project to a less affluent class of tenants and shoppers than HLP had envisioned. What originally had been conceived as a haven for young professionals was recast as a neighborhood for office workers in entry level positions.84

B. Current Plans

Ninth Square is being developed by the Ninth Square Project Limited Partnership (PLP), whose two general partners are MBA and the Related Companies, a New York-based real estate firm.85 While PLP concedes that it would have been best to do all redevelopment in one phase, the developer was unable to secure sufficient federal tax credits to do so.86 Consequently, it has divided redevelopment plans into two phases, termed “Interval I” and “Interval II,” respectively.87

During Interval I, PLP hopes to establish a critical mass of redeveloped space in the heart of Ninth Square to attract residents and merchants to the area (see Map 2).88 During Interval I, PLP plans to create 335 apartments, two parking garages containing a total of 644 parking spaces, 221 parking spaces on streets and surface lots, and 49,000 square feet of street-level retail and commercial space.89 The majority of apartments created during this first phase will be contained by a single, 188-unit apartment building being built along

84. Interview with Matthew Nemerson, President, New Haven Chamber of Commerce, in New Haven, Conn. (Jan. 29, 1993) (stating that decision to introduce low-income housing “was driven more by the leveraging of the equity [with tax credits] than by anything else”). MBA’s project in Richmond, Virginia was put on hold as Congress prepared to pass the Tax Reform Act. See Waite, supra note 78, at 9. The project, dubbed “Tobacco Row” because it will occupy two 19th-century tobacco warehouses, went forward after Congress passed a rider to the Tax Reform Act which specifically exempted a number of projects, among them Tobacco Row. See Tax Reform Act of 1986, Pub. L. No. 99-514, § 1317(38), 100 Stat. 2085, 2707 (1986); Joe Drape, Richmond plants hopes on Tobacco Row, ATLANTA J. & Const., July 7, 1991, § A, at 3; Deborah Marquardt, In Richmond, a Tobacco Row to Light Up Downtown, N.Y. TIMES, June 9, 1991, at 8, at 1.

85. Catherine Sullivan & Alvin Powell, Bonding solid for 258 city apartments, NEW HAVEN REG., Jan. 29, 1992, at 16; interview with Kathleen Etkin, Project Manager for Ninth Square, McCormack Baron & Associates, in New Haven, Conn. (Jan. 21, 1994). The Related Companies have been involved with MBA in the Ninth Square project since late 1987. Interview with Kathleen Etkin, supra. The Related Companies are “among the five largest holders of multifamily real estate in the U.S.[,] controlling some 95,000 apartment units.” Neely Heads Related Cos. Unit, LIQUIDATION ALERT, Sept. 20, 1993, at 4, available in LEXIS, News library, Allnews file.

86. Interview with Kathleen Etkin, Project Manager for Ninth Square, McCormack Baron & Associates, in New Haven, Conn. (Feb. 16, 1993). Etkin explained that MBA selected properties for inclusion in Interval I with the intention of maximizing the number of apartments built during that phase.

87. Id.

88. While the identities of the “players” have changed over the last decade, the basic plans for developing Ninth Square have not. From the beginning, developers envisioned the creation of rental housing along the Orange Street “spine” of Ninth Square. See Petruiolo, supra note 66, at F1.


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Ninth Square Project

Map 2

- Project Interval I
- Project Interval II
- Parcel Development Agreement
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Orange Street. This building will also feature first-floor commercial space.90 The buildings that occupied this strip were deemed unhistoric and have been razed. A combination of renovated historic structures and new construction will account for the balance of the residential and commercial space.91 As part of Interval I construction, PLP also will install various improvements in public areas, including new sidewalks, trees, streetlights, curbs, and streets. PLP expects all Interval I construction and rehabilitation to be completed by September 1, 1994.92

Interval II will focus on development in the eastern half of Ninth Square.93 This second phase will involve the construction of at least two (and perhaps three) new buildings, as well as renovation of several historic buildings.94 During this second phase, PLP will build up to 126 additional apartments and 28,600 of ground-floor commercial space at a projected cost of $23 million.95 PLP has not yet set a timetable for Interval II construction. PLP plans to begin discussions with potential Interval II lenders later this year, but does not expect groundbreaking before 1995.96

PLP hopes to lease commercial spaces to those businesses necessary to support the anticipated community of new residents. For example, PLP plans to have a 5000-square-foot food market, dry cleaners, laundromats, dry good merchants, and cafés. The archetype resident will be a secretary or bank teller, a person holding an entry level position in a downtown office building. To make the area affordable to such tenants, fifty-six percent of Interval I apartments will be available for below-market rents to low- and moderate-income individuals.97 To discourage commercial uses bothersome to the area's pro-

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90. Fusco Corp. of New Haven was awarded a general contract for the construction of this 200,000-square-foot building. The estimated cost of the project is $14.8 million. See supra note 16 and accompanying text.
91. Another new building has been built on Orange Street north of Crown Street. The balance of space will be provided by complexes of historic buildings with modern structural additions. Interview with Kathleen Etkin, supra note 85.
92. Id.
94. Interview with Kathleen Etkin, supra note 85.
95. Higgins, supra note 14, at 9; Barber, supra note 11, at 1.
96. Interview with Kathleen Etkin, supra note 85.
97. McCormack Baron & Associates, Ninth Square Project Summary 2 (Mar. 1991) (on file with author) [hereinafter 1991 Project Summary]; William Hathaway, New Haven fights fears about downtown plan, Hartford Courant, Sept. 2, 1991, at A1, A6. PLP expects subsidized rent to be $500 per month for a one-bedroom apartment and $650 per month for larger units. Low- and moderate-income individuals are persons earning between $18,000 and $28,000 per year. Interview with Kathleen Etkin, supra note 50. Some have voiced concerns that these subsidized units will be occupied not by entry level office workers but by welfare recipients, whose presence will downgrade the entire project. See, e.g. Catherine Sullivan, Mr. Downtown raps . . . , New Haven Reg., Sept. 20, 1991, at 41 (reporting New Haven developer Joel Schiavone's concerns). However, MBA has had a fair amount of success in maintaining a desirable mix of tenants in its other developments, in large part because of a careful tenant screening process which includes background checks and visits to prospective tenants' apartments. See Gallagher, supra note 81, at 1.

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spective residents, the City rezoned the entire district in 1988 from Central Business (BD) to Central Business One (BD1), which will prohibit “[c]ertain uses which are incompatible with high density residential/commercial districts . . . .” The zoning change will prevent several former Ninth Square residents, including a car rental agency and a gas station, from returning to the redeveloped area.

C. Financing

Table 1
Summary of Funding Sources for Ninth Square

<table>
<thead>
<tr>
<th>Source</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of New Haven</td>
<td></td>
</tr>
<tr>
<td>special obligation bonds</td>
<td>10,750,000</td>
</tr>
<tr>
<td>general obligation bonds/loan</td>
<td>3,750,000</td>
</tr>
<tr>
<td>general obligation bonds/grant</td>
<td>865,000</td>
</tr>
<tr>
<td>Connecticut Housing Finance Authority tax-free bonds</td>
<td>31,800,000</td>
</tr>
<tr>
<td>Connecticut Housing Finance Authority taxable bonds (to Yale)</td>
<td>10,000,000</td>
</tr>
<tr>
<td>Connecticut Dep’t of Housing grant/loan</td>
<td>6,500,000</td>
</tr>
<tr>
<td>Connecticut Dep’t of Economic Development grant</td>
<td>500,000</td>
</tr>
<tr>
<td>US Dep’t of HUD—Urban Development Action Grant</td>
<td>8,894,000</td>
</tr>
<tr>
<td>Limited Partnership Equity/US Inv. Tax Credits</td>
<td>18,100,000</td>
</tr>
<tr>
<td>TOTAL SOURCES</td>
<td>$91,159,000</td>
</tr>
</tbody>
</table>

PLP estimates that the first phase of the project will cost $91,159,000; of that sum, $42,400,000 will be directly applied towards construction.

The City will be responsible for providing $15,365,000. Of this sum, $4,615,000 will be provided through the sale of “general obligation” bonds, which are backed by the general revenues of the City. The City is granting

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99. A special exception is required to operate a gas station in a district zoned BD1, and car rental services are prohibited altogether. NEW HAVEN, CONN., CODE tit. VI (Zoning), § 41, at 1622.88-1622.88.1 (1992). Uses that are permitted at present include hotels (but not motels), grocery stores, liquor stores, department stores, furniture stores, banks, and theaters. Id. at 1622.84-1622.87. Prohibited uses include funeral homes, garden supply stores, and all manufacturing. Id. at 1622.84-1622.92. Uses that would increase vehicular traffic in the area seem to be particularly disfavored, as demonstrated by the fact that driving schools, taxi terminals, car washes, body shops, and car dealers are all prohibited. Id. at 1622.85-1622.88.1.
100. All information is derived from Barber, supra note 11, at 2-7. See also 1993 Financing Summary, supra note 11 (setting forth comparable figures).
101. Barber, supra note 11, at 1 & n.2. Another $48.8 million comprises so-called “soft costs” of the project, such as design, engineering, and marketing costs, as well as developer’s fees. These are costs of construction that PLP does not consider to be “construction costs.” Id. The $91 million price tag does not include the cost of renovating the sewer system in the area, which was completed earlier using state funds. Interview with Kathleen Etkin, supra note 50.
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$865,000 of this sum outright; the remaining $3,750,000 is a loan. These funds are earmarked for site preparation and the construction of public improvements. The remaining $10,750,000 will be derived from the sale of “special obligation” bonds, meaning bonds that are secured solely by the revenues of the project; if the project defaults, creditors have no right of action to recover the assets or revenues of the municipality. Essentially, the City is merely a conduit for these funds. Interest on these municipal bonds will be free of federal tax liability.

The single largest source of funding for the project will be the Connecticut Housing Finance Authority (CHFA). CHFA will provide $41.8 million through the sale of bonds. The bulk of these bonds will be tax free, with one important exception: Yale University is investing in the project by purchasing $10 million in CHFA taxable bonds. These bonds are guaranteed by CHFA and secured with a first mortgage on blocks of Interval I properties in Ninth Square. The terms of the loan agreement specify that between forty and fifty-six percent of the residential units in Ninth Square be made available to low- and moderate-income individuals at below-market rates.

CHFA and Yale have also agreed to lend $2.25 million each to establish a “Feasibility Fund” for the Ninth Square project. PLP has also contributed $1.6 million to this fund. The $6.1 million Feasibility Fund was used to purchase a “Guaranteed Revenue Contract” for the project. This much euphemized arrangement provides operating cash for the project in the event that there are not enough renters initially to cover operating expenses.

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102. Barber, supra note 11, at 3.
104. Barber, supra note 11, at 2. See generally Martin E. Gold, Economic Development Projects: A Perspective, 19 URB. LAW. 193, 204 (1987). The money to repay these bonds will be generated using "tax increment financing" (TIF). In a TIF scheme, the assessed value of a property is "frozen" for tax purposes at a date prior to redevelopment. Taxes on the frozen assessed value continue to go to the City (and thus to the fund for the general obligation bonds). As the property is developed, the value of the property will (hopefully) increase. The assessed value of the property will then increase, and these increases will be taxed, but funds derived from the tax on the increment above the frozen level will be used to repay the special obligation bonds. 1992 Project Documents, supra note 89, at D-5.

The City issued $10.75 million in special obligation bonds; the City will retain $2.3 million of that sum as reimbursement for its relocation and consulting expenses. Barber, supra note 11, at 3; 1992 Project Documents, supra note 89, at D-5.

105. Barber, supra note 11, at 4. According to the financing agreement, PLP has purchased mortgage insurance to guarantee that CHFA will be paid regardless of the project’s performance. See id. at 5; see also infra note 149 and accompanying text.
106. Barber, supra note 11, at 4.
107. Id.
108. 1993 Financing Summary, supra note 11; 1991 Project Summary, supra note 97, at 1-2. Etkin characterized this contract as the “most tortured part of the whole [Ninth Square] thing.” Interview with Kathleen Etkin, supra note 86. CHFA’s portion was derived from the Authority’s Investment Trust Surplus Fund. Barber, supra note 11, at 4.
110. Id. at 4-5; interview with Kathleen Etkin, supra note 86.
These funds, like the CHFA bonds, are secured with a first mortgage on Interval I properties.\textsuperscript{111}

Another $7 million is being provided by two other Connecticut agencies, the Department of Housing and the Department of Economic Development.\textsuperscript{112} About $8.9 million will be derived from a $10.69 million Urban Development Action Grant procured during the Reagan Administration;\textsuperscript{113} the balance of the UDAG is reserved for use during Interval II.\textsuperscript{114} Finally, PLP has raised about $18.1 million through the sale of limited partnership shares to investors. Because the project is not expected to make a profit for twenty years,\textsuperscript{115} the offering’s essential appeal is that shareholders are entitled to federal low-income housing and historic housing tax credits that can be used as “tax shelters.”\textsuperscript{116}

\textbf{D. Obstacles}

1. \textit{Delay}

When MBA began the process of renovating Ninth Square, it did not do so alone. From the outset, MBA allowed small private developers to participate in the redevelopment.\textsuperscript{117} Several buildings in Ninth Square were renovated in this manner.\textsuperscript{118} One independent developer converted two old commercial

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\textsuperscript{111} Barber, \textit{supra} note 11, at 4.
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\textsuperscript{112} The Connecticut Department of Housing granted CHFA $6.5 million, which it will loan to the Ninth Square Project. The Department of Economic Development granted New Haven $500,000, which it is required to pass through to Ninth Square as a grant to be used towards construction of commercial space. Sullivan & Powell, \textit{supra} note 85, at 16; 1992 Project Documents, \textit{supra} note 89, at D-4; see also Barber, \textit{supra} note 11, at 6.
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\textsuperscript{113} 1993 Financing Summary, \textit{supra} note 11; 1992 Project Documents, \textit{supra} note 89, at D-4. New Haven reportedly paid Fred Brown, a political consultant and a member of the Republican National Committee, $50,000 to procure $10.7 million in UDAG funds previously denied by the Reagan Administration. Janet Koch, \textit{Elm City offers consultant $84,000}, NEW HAVEN REG., Mar. 12, 1987, at 33. A former federal housing official alleged that another housing official improperly helped the grant proposal along because she thought New Haven Congressman Bruce Morrison was “cute.” See Tamara Lytle, \textit{Did Morrison’s ‘cute’ looks help city?}, NEW HAVEN REG., May 1, 1990, at 1.
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\textsuperscript{114} Barber, \textit{supra} note 11, at 5.
\textsuperscript{115} See William Hathaway, \textit{State is expected to set New Haven development in motion}, HARTFORD COURANT, Oct. 29, 1992, at C10. Understandably, PLP is being paid a flat fee up front by the City. However, most of the fee is subject to contingencies (e.g., MBA will have to absorb certain cost overruns) until the project is completed and leased up. Interview with Kathleen Etkin, \textit{supra} note 86.
\textsuperscript{117} MBA entered into development agreements with interested private developers to ensure that their efforts were consistent with the developer’s overall design. Fred Vogelstein, \textit{Ninth Square gets 1st new residents}, NEW HAVEN REG., Jan. 25, 1989, at 53.
\textsuperscript{118} Originally, MBA expected eight to ten parcels to be developed pursuant to such agreements, which were intended, in part, to keep the developer’s cost of land acquisition low. See Steve Hamm, \textit{Agreement reached on 9th Square}, NEW HAVEN REG., Apr. 18, 1988, at 1. However, only two of these parcels ("Trader’s Block" and 770 Chapel Street, consisting of four buildings in total) were actually renovated pursuant to these agreements. Interview with Kathleen Etkin, \textit{supra} note 86.
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buildings into luxury apartments in only fifteen months, putting them into service in the beginning of 1989.119 Other small developers also pressed ahead quickly.120 PLP, however, did not even break ground on the project until May 1993.121

Why were these independent developers so much faster than PLP? Redevelopment projects with substantial public involvement are almost inevitably more complicated than private projects and, consequently, they take much longer to complete.122 Simply put, to raise the capital necessary to fund a large public-private development, one must involve many agencies, each with an effective veto power over the project. In New Haven, every element of a publicly funded redevelopment scheme requires the approval of three bodies: the Redevelopment Agency Board, the City Planning Commission, and the Board of Aldermen.123 MBA also sought money from various state agencies and from CHFA, which required the approval of agency chiefs and the Governor. MBA also had to gain the approval of the U.S. Department of Housing and Urban Development (HUD) before MBA could spend the UDAG funds procured during the Reagan years.124 MBA then had to canvass expected investors to gain their approval. Before loosening its purse strings, each of these parties required assurances that MBA would make good on its debts. Each had to approve every significant element of the complicated Ninth Square proposal. Any time one party insisted on a change in plan, every other party had to approve that change. Consequently, while this process of building consensus and gaining approval on the Ninth Square project was "moderately straightforward,"125 it still took years to complete. Although MBA began

119. This development, known as "Traders' Block," consists of two three-story buildings joined by a small atrium. The 20-unit apartment complex is located on lower Orange Street.
120. See Hamm, supra note 77, at F1, F15 (contrasting activity of four local developers already at work with slow pace of MBA).
121. See supra note 14 and accompanying text.
122. See FRIEDEN & SAGALYN, supra note 29, at 104. The City of San Diego and developers required three and a half years to come to an agreement on the structure of the Horton Plaza mall deal. Similarly, the City of St. Paul, Minnesota and developers took three years to reach an agreement regarding a mall there. See id. at 153. The time to complete projects can easily exceed a decade. See id. at 245 (stating that Horton Plaza took 13 years from start to finish; Plaza Pasadena took 10 years); id. at 218 (reporting that average completion time for public-private projects is 15 years). Commentators have specifically noted the glacial pace that sometimes characterizes redevelopment projects in downtown New Haven. See id. at 85 (discussing delays in completion of Chapel Square Mall).
123. Each of these bodies must approve architectural plans, developer agreements, acquisition, relocation and demolition decisions, applications to HUD for UDAGs, zoning approvals, and tax abatements. Interview with Susan Godschall, Assistant Secretary of Yale University, in New Haven, Conn. (Mar. 17, 1993).
124. Under normal HUD procedures, PLP would have had to wait until after closing with CHFA and all other lenders to submit the deal to HUD for final approval. See Catherine Sullivan, 9th Square finds single investor, NEW HAVEN REG., Mar. 17, 1993, at 17, 21. Apparently, financing arrangements were sufficiently final that HUD granted approval on March 19, 1993, prior to the actual closing. See Mark Zaretsky, Ninth Square grant gets final OK, NEW HAVEN REG., Mar. 20, 1993, at 4.
125. Interview with Susan Godschall, supra note 123. Godschall then qualified her statement, adding that "nothing is ever straightforward in New Haven." Id. Even then-Mayor Daniels conceded of the Ninth
working with the City in 1986, the Board of Aldermen only approved the project, as currently structured, in December 1989\textsuperscript{126}—almost a full year later than the first independent developers began renting apartments in Ninth Square.

In addition, because of its close cooperation with the City of New Haven (and, particularly, because it was given control over the City’s eminent domain powers),\textsuperscript{127} MBA was constrained to behave as an agent of the state of Connecticut.\textsuperscript{128} This exposed MBA to delays as the City relocated tenants, as required by law,\textsuperscript{129} a process that took five years (1987-92) to complete.\textsuperscript{130} Typically, the ability to take advantage of the City’s eminent domain powers makes the burden of relocation worthwhile. However, before MBA could resort to use of the eminent domain power, it was obliged, under its agreement with the City, to use “every reasonable effort to acquire those properties” on its own.\textsuperscript{131} This typically required a period of negotiating with the property owner. If the owner was unwilling to part with the property, MBA would notify the City, which would then commence the state-mandated acquisition procedure.\textsuperscript{132}

Under this procedure, the City would file a “statement of compensation” in Connecticut Superior Court, and give notice to all interested parties.\textsuperscript{133}


\textsuperscript{129} Under 42 U.S.C. § 4625 (1988), a state agency must provide “relocation assistance advisory services.” § 4625(b). Required services include “[a]ssur[ing] that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable replacement dwelling,” § 4625(c)(3), and “assist[ing] a person displaced from a business . . . operation in obtaining and becoming established in a suitable replacement location.” § 4625(c)(4). Similarly, under Connecticut law, moving expenses must be provided “[w]henever a program or project undertaken by a state agency or under the supervision of a state agency will result in the displacement of a person.” CONN. GEN. STAT. tit. 8, § 8-268 (1991). The City relocated many businesses out of Ninth Square because the massive redevelopment effort was expected to make the area uninhabitable while construction is ongoing. See Catherine Sullivan, \textit{Downtown button shop makes way for rehab}, \textit{NEW HAVEN REG.}, Nov. 11, 1990, at F1; Fred Vogelstein, \textit{Downtown progress unsettling to stores}, \textit{NEW HAVEN REG.}, Dec. 7, 1988, at 63.

\textsuperscript{130} See Constance L. Hays, \textit{New Haven is the Target of Inquiry}, N.Y. TIMES, Mar. 19, 1992, at B7; see also Vogelstein, supra note 129, at 63.

\textsuperscript{131} Development Agreement, supra note 127, at 15.

\textsuperscript{132} Id. See generally CONN. GEN. STAT. §§ 8-128 to 8-133 (1992) (setting forth acquisition procedures).

\textsuperscript{133} CONN. GEN. STAT. § 8-129 (1992).
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If the property owner did not accept the proffered compensation (as it presumably would not, since it would have rejected all prior offers), a state referee was appointed to determine whether the sum was reasonable.\textsuperscript{134} If the state referee failed to approve, the City was permitted to submit an amended "statement of compensation,"\textsuperscript{135} and the cycle continued, presumably until the referee approved. Even if the referee approved, any aggrieved party could file an appeal in superior court. The court then would appoint a second referee, and review the reasonableness of the compensation offered.\textsuperscript{136} Thus, while eminent domain may have reduced MBA's transaction costs in acquiring buildings that had complicated ownership structures, it sometimes entailed protracted legal wrangling. Contrary to popular belief, eminent domain did not allow MBA to purchase buildings at bargain prices; MBA acquired the property in the late 1980s, when local real estate values were at their peak.\textsuperscript{137}

Financing for the project was nearly complete when, in 1990, a dramatic downturn in the Connecticut real estate market forced further delays. The developers realized that the market would not support such a large influx of new apartments and retail space at that time. The financing arrangements fell apart as wary investors withdrew their support. Three years passed before market conditions again became favorable enough to allow MBA to go ahead with the project. Although no private investors other than MBA had invested funds in Ninth Square at the time the Connecticut real estate market crashed, these events illustrate one of the risks inherent in investing in large scale public-private redevelopment projects: Funds invested in such a project are at risk until the project is completed and begins to generate positive returns. The greater delays associated with large and potentially unwieldy deals expose developers to additional risks as their money is unproductive for a longer period before the project is completed.

2. Financing

Traditional urban redevelopment is frequently hindered by the difficulty of assembling small parcels of urban land into usable plots. In addition, City planners often must counter the unwillingness of some developers and merchants to become involved in urban areas, which are perceived as having worse crime problems than the suburbs.\textsuperscript{138} These concerns, however, were relative-

\begin{itemize}
  \item \textsuperscript{134} A referee is appointed only if the amount in controversy is over $10,000. \textit{CONN. GEN. STAT.} § 8-131 (1992). However, for the large commercial buildings at issue in Ninth Square, this requirement would have been easily satisfied.
  \item \textsuperscript{135} \textit{Id.}
  \item \textsuperscript{136} \textit{CONN. GEN. STAT.} § 8-132 (1993).
  \item \textsuperscript{137} Interview with Kathleen Etkin, \textit{supra} note 50. See generally \textit{supra} note 127 and accompanying text (discussing properties acquired through eminent domain).
  \item \textsuperscript{138} FRIEDEN \& SAGALYN, \textit{supra} note 29, at 85-86.
\end{itemize}
ly minor obstacles to the redevelopment of Ninth Square as the City used its eminent domain powers to expedite land assembly and because MBA did not begin to look for tenants until after the financing arrangements had closed. According to its developers, Ninth Square’s primary problem has been their inability to procure funding for the project.139

The developers’ difficulty in obtaining financing is symptomatic of the project’s many uncertainties. First, investors are generally wary of investing in blighted urban areas, and of investing in downtown New Haven in particular.140 Second, the unique nature of the project, which might make it an asset to downtown New Haven, also means that the concept is untried and therefore uncertain. Investors are understandably reluctant to be the first to finance an idea. Third, the New Haven market for apartment and retail space is depressed. Fourth, CHFA projects have a history of renting slowly.141 Fifth, construction costs are high, running an estimated $180,000 per apartment.142 It will take years to recoup the project’s high startup costs,143 and investors realize that the projected cash flows necessary to break even become ever more uncertain as they stretch farther into the future.

Ninth Square derives capital from three principal sources: (1) the sale of limited partnership shares; (2) the sale of municipal bonds; and (3) the sale of CHFA bonds. MBA has had to struggle to secure each of these sources of financing. For months, PLP was unable to find investors interested in purchasing $23 million in limited partnership interests in the project. Because of this tepid response, PLP planned to spend a large sum—about $3 million—to

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139. Interview with Kathleen Etkin, supra note 50. Because of problems procuring financing, MBA postponed its closing date in short increments for months. See, e.g., Zaretsky, supra note 124, at 4.

140. Matthew Nemerson, then-president of the New Haven Chamber of Commerce, explained, "[t]his has been a particularly hard deal to syndicate, because they have [had] to syndicate it in small chunks because people are pretty chicken about the deal. They have to do a lot of presentations and a lot of rounding up money." Interview with Matthew Nemerson, supra note 84. According to Etkin, even CHFA is leery of downtown housing developments. Interview with Kathleen Etkin, supra note 50. There are many reasons for this. Of course, developers fear that the forces that caused the area to become blighted in the first place will reemerge after redevelopment. Developers also realize that it will be difficult to change public perceptions of the area. Furthermore, projections of future income are inherently speculative when there is little market activity in an area to serve as an empirical basis for forecasts.


142. By comparison, a typical CHFA unit costs $100,000. These high costs have helped make Ninth Square CHFA’s largest project by a margin of $20 million. Ninth Square hangs in balance, supra note 141, at B2. Other estimates indicate that per unit costs are even higher. Based on estimates of costs for the residential component of Interval I, the unit cost of an apartment would be $225,373. See Barber, supra note 11, at 7 (stating total cost of residential component of Ninth Square project’s 335 units was $75.5 million).

143. See supra note 115 and accompanying text. Repayment will be slowed by the high percentage of subsidized apartment units in the Ninth Square project. Most mixed-income government-subsidized projects have consisted of 80% market-rate units. Hathaway, supra note 97, at A6. Ninth Square’s developers are planning on only 44% market-rate units, with the remainder being subsidized. See supra text accompanying note 97.
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syndicate about $20 million in limited partnership interests. They succeeded in gaining commitments from several investors to buy smaller interests, but were disappointed by the local response to the offering. In March 1993, MBA's syndication problem was suddenly solved when SunAmerica, Inc., which had previously agreed to guarantee Ninth Square's mortgage payments to CHFA, entered into a separate agreement to purchase the entire limited partnership interest.45

MBA also had problems creating interest in municipal bonds. Investors' reluctance to buy is partly explained by the fact that most of these bonds are not risk-free. Although issued by the municipality, the City's special obligation bonds are secured only by the assets of the project, rather than the City's tax revenues. Moreover, early delays, caused in large part by time-consuming approval procedures, cost the project valuable years during the halcyon days of the mid-1980s. By the time MBA began its efforts to sell the bonds, the first round of bank failures was just beginning to hit the area. Weak local banks were wary of the project, and national banks took their cues from local banks.46

The project even had trouble gaining the support of the CHFA. After five years of concerted efforts by MBA to gain approval, the CHFA board unanimously voted to reject the project in March 1991. CHFA board members feared that if such a large project failed to repay loans, Connecticut's credit rating would be severely impaired.47 Personal appeals by former Yale President Benno Schmidt, along with Yale's commitment to purchase more of the project's bonds, convinced Governor Weicker to revive the project. To allay fears of CHFA board members, Weicker ordered a new feasibility study; the previous study, which was then two years old, predated the recession. To further assuage CHFA concerns, MBA procured private mortgage insurance to limit the State's exposure.48 CHFA reversed its position in September

144. Interview with Kathleen Etkin, supra note 50.
145. Barber, supra note 11, at 1. Prior to this time, MBA's only major investors were the Federal National Mortgage Association, which had pledged $8 million, and New Haven Savings Bank, which had offered to buy $1 million. See Sullivan, supra note 124, at 17. Syndication costs were evidently significantly reduced by the appearance of SunAmerica. MBA's budget no longer reflects the expected $3 million in syndication costs. Compare Barber, supra note 11, at 6 (reflecting no syndication costs) with Interview with Kathleen Etkin, supra note 50 (reporting expected syndication costs of $3 million).
149. Hathaway, supra note 97, at A6; William Hathaway, Borges says project too risky, HARTFORD COURANT, Aug. 23, 1991, at C1. The mortgage insurance was procured from Broad, Inc. of Los Angeles, which has since changed its name to SunAmerica, Inc. 1992 Halcyon Study, supra note 148. Under the agreement, SunAmerica will begin to guarantee all of the Ninth Square project's mortgage payments to CHFA once construction is 70% complete. Barber, supra note 11, at 5. The guarantee remains in effect
1992. Then-State Treasurer Francisco L. Borges, who doubted the project's ability to generate payments, persuaded Governor Weicker to give the project $7 million in grant money to reduce the amount of debt financing.150

Yale has been a guiding force behind the Ninth Square project, shepherding it through difficult periods.151 To help overcome Governor Weicker's reservations about the project, Yale agreed to purchase $10 million of CHFA bonds. Yet Yale refused to use its money as an equity stake in the project; they would only invest if the bonds were guaranteed by the State.152 The Hartford Courant chastised Yale for being unwilling to "take the same risk it is asking the state to take."153 As a compromise, Yale agreed to purchase taxable bonds, and make a smaller, $2.25 million contribution to the "feasibility fund."154

Having struggled for the better part of a decade to secure financing, PLP claims that the project finally seems to be on a stable footing. Although Connecticut is in the midst of a budget crunch, Kathleen Etkin, MBA's Project Manager for Ninth Square, seems confident that Ninth Square is not on the chopping block. While the Governor has targeted aid to cities for cuts to ensure that the budget does not run afoul of the state's constitutional and statutory spending caps,155 the Ninth Square funding is effectively committed.156 The first $30 million of construction money for the project was collected ratably from participants on April 30, 1993.157

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150. The Connecticut Department of Housing provided $6.5 million of this grant, which is earmarked to pay for construction of 258 of the 333 planned apartments. The Connecticut Department of Economic Development provided the $500,000 balance, slated for use to renovate the exteriors of several commercial buildings. Sullivan & Powell, supra note 85, at 16.

151. See, e.g., Tony Levine, Ninth Square Is Set to Go, Now Awaits HUD Approval, YALE DAILY NEWS, Apr. 15, 1993, at 4 (reporting that Yale played a "constructive, indeed critical role in the effort" to finance Ninth Square) (quoting Yale University Secretary Sheila Wellington); interview with Matthew Nemerson, supra note 84; see also Fainstein & Fainstein, supra note 8, at 39, 72-74 (detailing Yale's customary support of redevelopment efforts).

152. See Hathaway, Borges says project too risky, supra note 149, at C1.


157. Interview with Kathleen Etkin, supra note 72.
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E. Project Viability

A market study completed for the CHFA in August 1992 concluded that, despite the recession, PLP can meet its projections and rent enough apartments and retail space at the prices necessary to meet obligations to creditors.\(^{158}\) However, even this study concedes that project feasibility depends on "aggressive" leasing projections and projected rent increases that are optimistic in view of the current rental market in the Northeast.\(^{159}\) Other analysts have been even less sanguine. A June 4, 1992 memorandum prepared for the chief of the Authority’s housing management division complained that Ninth Square’s developers had underestimated their operating costs for the apartments by hundreds of thousands of dollars annually and offered unrealistic estimates of the time it would take to lease apartments and retail space.\(^{160}\)

If PLP cannot lease as many apartments as projected, as quickly as projected, Ninth Square will not generate enough income to meet its financial obligations. Even if the developer’s assumptions are correct, it will take nearly twenty years for the development to be profitable. Although they voted to approve the project, CHFA board members still concede that the plan is risky. However, they are convinced that, given the seriousness of New Haven’s economic predicament, it is worth the gamble.\(^{161}\)

III. UPPER STATE STREET: AN ALTERNATIVE?

Some critics have accused New Haven’s city government of attempting to solve its urban problems by simply “throwing money” at them. While this characterization is oversimplified and unfair, there is some truth to it. As

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158. See 1992 Halcyon Study, supra note 148. However, this study concedes that Ninth Square "will likely be a difficult retail leasing challenge" because of its downtown location, and predicts that occupancy will stabilize around 80-90%. \(\text{Id. at 26.}\)

159. MBA projects that the market will absorb seven market-rate apartment units per month and 25 subsidized units per month. \(\text{Id. at 7.}\) The study expects rent increases of 3% in 1993, 3.5% in 1994, and 4% thereafter. \(\text{Id. at 6.}\) Current apartment vacancy rates in the Northeast stand at about 10%. \(\text{U.S. Apartment Vacancies Up, SACRAMENTO BEE, Aug. 22, 1993, Real Estate, at 13.}\) When the apartment vacancy rate reached 7% in the Northeast in 1991, it matched the “region’s highest rate in the 31 years the [United States] Census Bureau has been reporting regional data.” \(\text{Nation’s Apartment Vacancy Rates Show Modest Improvement During First Quarter, PR NEWSWIRE, May 8, 1991, available in LEXIS, News library, Allnews file.}\)

160. Memorandum regarding unresolved Housing Management concerns from Edmund M. Campion, Jr., Housing Management Officer, to Lenward Gatison, Administrator, Housing Management, Connecticut Housing Finance Authority (June 4, 1992) (on file with author).

161. Hathaway, supra note 147, at C8.
discussed earlier in this Article, New Haven officials traditionally have turned to big, expensive projects to solve urban woes. Today, City officials look to the $100 million Ninth Square project\textsuperscript{162} and the proposed $350 million Taubman mall\textsuperscript{163} to revitalize downtown New Haven.

This seemingly unshakable conviction that “bigger is better” seems somewhat ahistorical. Some of New Haven’s greatest renewal achievements, such as the redevelopment of the Wooster Square neighborhood, have entailed relatively modest public expenditures.\textsuperscript{164} One of New Haven’s favorite neighborhoods,\textsuperscript{165} Upper State Street, was revitalized through private efforts at a direct cost to the public of slightly more than one million dollars.\textsuperscript{166} Today, the neighborhood is considered a model for redevelopment by other Connecticut municipalities.\textsuperscript{167} This section discusses this urban renewal success story.

A. History

State Street, then called Neck Lane, was in use by the early 1640s as one of the first roads running out of New Haven. Upper State Street was well known by the 1650s for its excellent pastureland and the salt hay that grew in the marshes along the Mill River.\textsuperscript{168} This area remained virtually uninhabited until after 1850.\textsuperscript{169} The first buildings in the area were largely residential, but commerce came to dominate the area after 1875, and ultimately the

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162. \textit{See supra} text accompanying note 100.

163. The proposed mall would provide about 1.1 million square feet of retail space and cost a total of $350-400 million. The City has requested $90-100 million in state subsidies to be provided through breaks in sales taxes or general obligation bonds. \textit{See} Catherine Sullivan, Taubman, 9th Square gain in urgency, NEW HAVEN REG., Mar. 2, 1993, at 1, 8.

164. The redevelopment of the Wooster Square area (a few blocks east of Ninth Square) during the 1950s entailed about $6.9 million in direct public construction and $16.3 million in nonpublic construction (measured in 1973 dollars). Fainstein & Fainstein, supra note 8, at 42. Although these public expenditures were higher than those for redevelopment in Upper State Street, they are modest in comparison to other projects of the time. For the 1955 redevelopment of Oak Street (southwest of Ninth Square), public and nonpublic construction costs were, respectively, $19.9 million and $40.8 million; for Church Street (1957), $37.5 million and $64.1 million; for State Street (1968), $57.7 million and $27.8 million. \textit{Id}.


166. \textit{See infra} Table 2 accompanying notes 211-14.


168. Shumway & Hegel, supra note 21, at 17. Neck Lane was so called because it ran to the “Neck,” or the flat region between the Mill and Quinnipiac rivers. \textit{Id.}; \textit{see also} THOMAS J. FARNHAM, UPPER STATE STREET: 1640-1982, at 5 (1982).

169. Only about a dozen houses stood in the Upper State Street area during the early 1850s. \textit{See} FARNHAM, supra note 168, at 6-8. Some researchers believe, based on “the names of tenants that occasionally turn up on land deeds,” that “a black community—or at any rate a black and white community” existed in this area. \textit{See} BROWN, supra note 8, at 31.
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neighborhood contained some light industry.\textsuperscript{170} By the turn of the century, Upper State Street had become a mixed residential/commercial strip, its merchants selling provisions to the occupants of neighboring working class residential areas.\textsuperscript{171} Most of the buildings along the strip were "mixed use" structures. The first floor of the building typically consisted of commercial space, while the merchant made a home in the upper stories above the shop.\textsuperscript{172}

The area remained an important commercial center until the late 1950s, when the effects of the migration to the suburbs began to be felt.\textsuperscript{173} The decay of the area accelerated rapidly in the early 1960s, when the elevated roadway of I-91 was built immediately to the east of Upper State Street, cutting the area off from traditional customers in residential areas to the east.\textsuperscript{174} The commercial/residential mix changed substantially during the 1950s and 1960s. The more recently arrived merchants generally catered not to the neighborhood population, which was shrinking, but to more mobile shoppers from other areas of New Haven and the surrounding region.\textsuperscript{175} The area became known for its second hand stores and dusty shops peddling "subantiques."\textsuperscript{176} Because of the decline in business and the relative importance of customers from outside the neighborhood, many merchants only opened their stores on weekends.\textsuperscript{177} As the neighborhood deteriorated, rents fell so low (and potential tenants became so undesirable) that many landlords ceased renting the space above first-floor shops and instead left it vacant.\textsuperscript{178} By 1980, the neighborhood's population was only half that of 1950.\textsuperscript{179} Upper State Street had degenerated into "a vast wasteland,"\textsuperscript{180} an area of "largely deteriorated structures and high crime."\textsuperscript{181}

\begin{itemize}
  \item [170.] Shumway & Hegel, supra note 21, at 42.
  \item [171.] See FARNHAM, supra note 168, at 10-11, 15. The area’s first residents were Yankees and Irish-Americans. During the 1920s, Italian- and Polish-Americans increasingly flocked to the area. \textit{Id.} at 11.
  \item [172.] State Street Nomination, supra note 12, at 8-2.
  \item [173.] FARNHAM, supra note 168, at 15.
  \item [174.] \textit{Id.}; Walter Dudar, \textit{An incredible bargain in new renewal project}, NEW HAVEN REG., May 11, 1980, at F1.
  \item [175.] FARNHAM, supra note 168, at 15.
  \item [176.] BROWN, supra note 8, at 29, 31.
  \item [177.] Interview with Robert S. Frew, developer, in New Haven, Conn. (Dec. 6, 1993).
  \item [178.] Interview with Frederick Russo, Owner of Russo Roofing, in Hamden, Conn. (Dec. 23, 1993); interview with Robert S. Frew, supra note 177. Frew estimates that vacancy rates on residential space above storefronts ran close to 100%. \textit{Id.}
  \item [179.] NEW HAVEN CITY PLAN DEP’T, supra note 12, at 2.
  \item [180.] Dudar, supra note 174, at F1.
\end{itemize}
B. Redevelopment

Redevelopment of the Upper State Street area can be traced to around 1975, when John Matthews, an architect, renovated a former firehouse on nearby Edwards Street to accommodate a restaurant and his architectural firm's offices. Although the area continued to languish for some time thereafter, the firehouse caused others to begin thinking about redeveloping the Upper State Street neighborhood. Several developments combined to help reverse the neighborhood's decline. In 1978, long-time area merchants began meeting to discuss common concerns, including rampant crime and the physical deterioration of buildings. At the same time, Robert S. Frew, a newcomer to the neighborhood and Associate Professor at the Yale Architecture School, began buying buildings on State Street and neighboring Mechanic Street with the intention of redeveloping them. Sensing the opportunity for redevelopment, landowners and merchants held informal discussions in 1978 that led to the formation, in 1979, of the Upper State Street Association (the Association). Soon a pro-renewal majority emerged, and the Association's leadership began meeting with City officials to discuss physical improvements in the neighborhood.

At about the same time, City officials disenchanted with traditional large scale renewal programs began examining less disruptive alternative methods of redeveloping the city's derelict commercial areas. As City planners devised what would become the Neighborhood Commercial Revitalization Program (NCRP), members of the newly formed Association began discussing the neighborhood's needs and its potential for rehabilitation with Lawrence Hall, an official in the City's Office of Housing and Neighborhood Develop-

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183. FARNHAM, supra note 168, at 15-17; Davies & Dixon, supra note 182, at 16.

184. FARNHAM, supra note 168, at 17; Davies & Dixon, supra note 182, at 15-16.

185. FARNHAM, supra note 168, at 17; Upper State Street rehab starts, NEW HAVEN REG., Oct. 23, 1982, at 21. The date the Association was founded has never been fixed with great certainty. Some sources claim it was founded as early as 1977. See CITY OF NEW HAVEN, INSIDE NEW HAVEN'S NEIGHBORHOODS 51-52 (1982) (stating that Association's first meeting was held in October 1977).

186. See Wood, supra note 182, at B1.


188. Davies & Dixon, supra note 182, at 19. The City expressed interest in redeveloping the area as early as 1978, when the City Plan Department undertook a study of the Upper State Street area. The study noted "the problems caused by highway intrusion, vacant lots, disrupted pedestrian flows and dilapidated buildings." See CITY PLAN DEP'T, CITY OF NEW HAVEN, AN ACTION PLAN FOR UPPER STATE STREET, Technical Supp. at 1 (1978) [hereinafter UPPER STATE STREET ACTION PLAN].
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ment. In 1979, then-Mayor Frank Logue announced the beginning of a "cooperative effort" to revitalize Upper State Street: The City agreed to install new brick sidewalks, curbs, trees, and street lighting if merchants would make physical improvements to their properties. In March 1980, after defeating Logue to become Mayor, Biagio DiLieto designated Upper State Street as the city's first targeted district in his new Neighborhood Commercial Revitalization Program.

Under the program, the City hoped to "rejuvenate neighborhood commercial districts through joint public/private action and investment." NCRP, as originally designed, consisted of two subprograms. First, the City offered modest grants to property owners to renovate their buildings. The grants were designed to provide small property owners enough "seed money" to enable them to obtain additional loans from banks. Second, the City promised that if over fifty percent of the commercial buildings in the area were renovated, the City would undertake a number of public improvements, including repaving streets, repairing sidewalks, creating new parking lots, and installing granite curbs, new streetlights, new garbage cans, and new trees. In addition, the New Haven Redevelopment Agency planned to auction off a deteriorated State Street property for a nominal fee (contingent on the purchasers' agreement to redevelop the property according to a City-approved plan) as a catalyst to encourage property owners to begin renovations.

During the first phase, which lasted from June 1980 until June 1982, the City made facade and building improvement grants available to the owners of commercial buildings in the Upper State Street area. Under the "facade

189. **Upper State Street targeted, supra note 181, at 19** (noting that City worked with Upper State Street Association for two years prior to unveiling NCRP); Davies & Dixon, **supra note 182, at 22**.
191. DiLieto, supra note 187, at 1; **Upper State Street targeted, supra note 181**. DiLieto served as New Haven's mayor from 1980 to 1989. Lawrence Hall believes that the City chose State Street to be the first neighborhood redeveloped under the NCRP because of the merchants' commitment to renovation and their willingness to invest their own money. Interview with Lawrence Hall, former official, Office of Housing and Neighborhood Development, City of New Haven, in New Haven, Conn. (Jan. 23, 1994).
193. **See id.**
194. If two adjacent buildings were closely related (e.g., sharing a common wall) and owned by the same landlord, the buildings were treated as part of a single unit for purposes of the renovation grants. Interview with Robert S. Frew, **supra note 177**.
195. **Id.**
196. 1982 NCRP REPORT, **supra note 192, at 32**.
197. Arthur M. Horwitz, **State Street renovation: City hopes building work starts trend**, NEW HAVEN REG., May 25, 1980, at B1; DiLieto, **supra note 187, at 2**. The City sold the property, located at 1010-1012 State Street and containing 9240 square feet of floor space, to developers for $8500. Arthur M. Horwitz, **Developers are picked for State Street project**, NEW HAVEN REG., July 23, 1980, at 1.
198. Interview with Robert S. Frew, **supra note 177**; **OFFICE OF HOUS. & NEIGHBORHOOD DEV., CITY OF NEW HAVEN, ANNUAL REPORT 1985, 17** [hereinafter 1985 NCRP REPORT]; **OFFICE OF HOUS.**
grant" program, the City matched property owners' expenditures on exterior renovations dollar-for-dollar up to a maximum of $5000 per building. The City also provided "building improvement" grants, amounting to a twenty percent subsidy up to a maximum of $10,000 per building, for upgrading interior commercial space. To be eligible for funding, property owners had to have their renovation plans approved by the State Street Design Committee, composed of local architects, area landowners, and a representative of the City. The committee's architects sought to restore the buildings in the area to their original appearance, and used City funds as a carrot to encourage property owners to undertake appropriate renovations. As most of the property owners who participated in the NCRP were not developers but owner-occupants of modest means, the Upper State Street Association sponsored a group of architects, bankers, real estate brokers, and building contractors to consult informally with property owners, free of charge.

To prod landowners into action, the City imposed a two-year time limit on building rehabilitation: If the requisite number of properties were not improved during the two-year period, the City would not undertake its promised public improvements. While over fifty percent of property owners had committed informally to renovating their properties, only about a half-dozen immediately began renovating. Many area merchants, interested in redevelopment but unwilling to be the first to make expensive renovations, declined to participate in the program.

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The grants covered items such as plumbing, heating, air conditioning, and various sorts of "mechanical" work. Interview with Robert S. Frew, supra note 177.

The City's Neighborhood Preservation Program (NPP) also agreed to make some low-interest, federally subsidized loans available to property owners. Wood, supra note 182, at B1. However, in 1981 Mayor DiLieto shut down the $12 million NPP after a probe found rampant waste and mismanagement at the agency. The probe found, in part, that NPP officials had (1) "lost track" of grants and loans, dispensing $1.6 million more than they had, (2) let 38% of loans default or go uncollected, compared with a 1.5% default rate for banks, (3) failed to respond to 2000 applicants and (4) allowed funds to be used on projects that did not meet program requirements. See Jon Hall & Robert A. Phillips, DiLieto halts housing rehab program, NEW HAVEN JOURNAL-COURIER, Nov. 18, 1981, at 1. The program was terminated before it made any loans available to State Street property owners. Interview with Robert S. Frew, in New Haven, Conn. (Mar. 15, 1993); interview with Kenneth J. Kraus, in New Haven, Conn. (Mar. 15, 1993).

200. The committee was composed of local architects (and property owners) Frew, Kenneth J. Kraus, and John Matthews; Frank Pannenborg of the City's architectural staff; and property owners Mrs. B.F. Guida, Penna Langello, and Mary Fussell. FARNHAM, supra note 168, at 18; interview with Robert S. Frew, supra note 177.

201. Interview with Robert S. Frew, supra note 199.

202. See Dudar, supra note 199. Most NCRP participants developed only one building under the program. Only two property owners—Robert Frew and Kenneth Kraus—developed significant amounts of property under the program. See Neighborhood Commercial Revitalization Program Vouchers (on file with author) [hereinafter NCRP Vouchers].

203. Interview with Robert S. Frew, supra note 177.

204. Upper State Street targeted, supra note 181.

205. Horwitz, supra note 197, at B1.
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adopted a wait-and-see attitude. However, Robert Frew, Kenneth J. Kraus (like many other prominent figures in Upper State Street’s redevelopment, an architect), and Fred Russo (a roofing contractor) bought a number of buildings and quickly began making renovations, helping to solve the local “prisoners’ dilemma.” The property owners’ efforts picked up momentum after 1980, and during 1981-82 extensive redevelopment occurred as about twenty buildings were renovated. Of the fifty-seven properties eligible under the program, only twenty-three eventually received funding, short of the required fifty percent. 206

206. John DeRose of DeRose’s Market was prominent among those who decided to “wait until other building owners improve their structures.” Leviit, supra note 190, at 15. Double-digit interest rates prevented some landowners from making improvements. See generally Horwitz, supra note 197, at B1. Other property owners were much more eager, and began making extensive improvements even before Mayor DiLieto announced the program of subsidies. FARNHAM, supra note 168, at 18. 207. FARNHAM, supra note 168, at 18-19. Frew, an Associate Professor at Yale’s Architecture School, began renovating buildings in the Upper State Street area in 1978. He paid between $8000 and $26,000 apiece for his six buildings, and began renovating them with the assistance of Yale architecture students. Interview with Robert S. Frew, supra note 199. Frew renovated four buildings with the assistance of the NCRP. See NCRP Vouchers, supra note 202. He renovated a total of 14 structures on State Street between 1978 and 1987. Frew served as the second president of the Upper State Street Association and was later elected a city alderman. Interview with Robert S. Frew, supra note 177; interview with Robert S. Frew, supra note 199. Kraus renovated at least three buildings with the assistance of the NCRP. See NCRP Vouchers, supra note 202. Kraus went on to renovate several more, and today is one of Upper State Street’s biggest landowners. Interview with Kenneth J. Kraus, supra note 199. Russo renovated only one building with NCRP assistance, and renovated another three buildings in Upper State Street after the program closed. Interview with Frederick Russo, supra note 178. 208. The term describes a type of collective action problem in which two or more parties would be jointly better off if they cooperated, but are hindered from cooperating by imperfect information. Here, any investment by a property owner would work to the benefit of merchants on the street by improving the shopping environment and drawing additional customers. However, a property owner would be reluctant to invest if she believed she would be the only one to do so, because the area as a whole would remain unattractive and she would be unlikely to receive the full measure of benefits from her investment. However, if all property owners acted together, the neighborhood as a whole would be improved, and the property owners would be more likely to benefit fully from their individual investments. For another illustration of the prisoner’s dilemma among large groups of actors, see Edward B. Rock, The Logic and (Uncertain) Significance of Institutional Shareholder Activism, 79 GEO. L.J. 445, 457 n.37 (1991) (illustrating concept with example of collective shareholder action to discipline corporate management). 209. Only two payment vouchers were authorized during 1980, indicating that only two projects were completed that year. NCRP Vouchers, supra note 202. By comparison, a total of 33 vouchers were authorized in 1981 and 1982. Id. Indeed, an internal memorandum of the City’s Office of Housing and Neighborhood Development identifies only four complete projects as of September 11, 1981. Office of Hous. & Neighborhood Dev., City of New Haven, Neighborhood Commercial Revitalization Expenditures Through Sept. 11, 1981 (on file with author). 210. See NCRP Fact Sheet, supra note 15; supra note 196 and accompanying text (discussing 50% requirement).
Table 2  

Funding Sources for Upper State Street During NCRP

<table>
<thead>
<tr>
<th>Source</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rehabilitation</td>
<td></td>
</tr>
<tr>
<td>City of New Haven bonds</td>
<td>41,323</td>
</tr>
<tr>
<td>Connecticut Dep’t of Economic Development grant</td>
<td>150,886</td>
</tr>
<tr>
<td>US Dep’t of HUD—Comm. Dev. Block Grants</td>
<td>10,545</td>
</tr>
<tr>
<td>Other public sources</td>
<td>15,000</td>
</tr>
<tr>
<td>Private capital</td>
<td>3,000,000</td>
</tr>
<tr>
<td>Public Improvements</td>
<td>650,000</td>
</tr>
<tr>
<td>Administrative—Upper State Street Ass’n</td>
<td></td>
</tr>
<tr>
<td>US Dep’t of HUD—Comm. Dev. Block Grants</td>
<td>136,921</td>
</tr>
<tr>
<td>TOTAL SOURCES</td>
<td>$4,004,675</td>
</tr>
</tbody>
</table>

The City dispensed a total of $217,754 to property owners in the form of facade and building improvement grants between 1980 and 1982, generating (according to official sources) about $3 million in private investment. Program subsidies consisted of a mixture of municipal, state, and federal money. The vast majority of the money used for facade and building improvement grants was derived from a $135,000 grant from the Connecticut Department of Economic Development. Another $41,323 was derived from mu-

211. All figures are rounded to the nearest dollar.
212. Office of Hous. & Neighborhood Dev., Upper State Street NCRP-Final (Sept. 21, 1982) (manuscript summary of funds dispensed) (on file with author) [hereinafter NCRP-Final].
213. ... See infra notes 229-34 and accompanying text.
214. NCRP-Final, supra note 212. This document concluded that $199,701.39 had been dispensed through the facade grant and building improvement programs. However, this figure was calculated in late 1982 and does not reflect two expenditures made under the program: one $15,000 grant made to Robert Frew for renovating 1010-12 State Street, and one $302.11 grant to Aurora Lampworks. The former figure was omitted because the City did not disburse the funds until 1984; the latter was omitted through apparent inadvertence. See also 1984 NCRP REPORT, supra note 198, at 24 (reporting that $202,451 had been dispensed through facade grant and building improvement program); see also 1982 NCRP Report, supra note 192, at 33 ($201,521). The 1985 annual report states that the facade and building improvement grant program had generated “private investment of $3 million for an initial public investment of $1,200,000.” 1985 NCRP Report, supra note 198, at 17. This latter figure is probably incorrect. For the City to dispense $1,200,000 in facade and building improvement grants, it would have had to give the full $15,000 available to 80 property owners, far more than were eligible for the program, and about four times as many as actually received money under the program. See NCRP Fact Sheet, supra note 15. The figure also does not correspond to the stated figure for private investment, $3 million, on which all of the annual reports agree. Under the stated grant formula, the minimum private investment that would generate $1,200,000 in public subsidies is $4,400,000.
215. NCRP-Final, supra note 212; see also 1982 NCRP REPORT, supra note 192, at 34 (indicating that amount originally budgeted was $130,000). The City apparently exceeded its budget by $15,886, dispensing some $150,886 in State grant funds. See NCRP-Final, supra note 212 (reflecting arithmetic error: actual total should be $150,583.39, plus $302.11 grant to Aurora Lampworks, for total of $150,885.50).
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municipal bond funds, and the balance from HUD Community Development Block Grants (CDBGs). The City sought to minimize the use of federal funds to finance renovations because of the "strings" attached to federal money. In particular, use of CDBG money on a commercial redevelopment project would trigger the requirements of the Davis-Bacon Act, requiring that "prevailing" (i.e., union) wages be paid in making the renovations.

A City study had indicated that the pronounced lack of public amenities in the area was one of the greatest obstacles to the neighborhood's revival. In late 1980, well before the closing of the building rehabilitation period, the City began addressing this problem through its promised program of public improvements in the area. The public improvements were completed by 1983. The City had a limited budget for the area, so the public improvements it provided were more modest than initially promised: The City provided no period lampposts, and the new sidewalks were concrete rather than brick. The improvements cost the City $650,000. Funds for public improvements also were derived from municipal, state, and federal sources. Such modest sums were relatively easy to come by at a time when New Haven was receiving several million dollars in CDBG funds per year.

217. NCRP-Final, supra note 212. The City had budgeted $50,000 in bond funds. See 1982 NCRP REPORT, supra note 192, at 34. The City may have used the $8677 in “surplus” bond funds to pay some of the shortfall in State grant funds. See supra note 216.
218. NCRP-Final, supra note 212.
219. Interview with Lawrence Hall, supra note 191.
221. See 42 U.S.C. § 5310 (1982). This section did not apply to the rehabilitation of residential property if the property was used by seven or fewer families. Id. Hall stated that being able to use cheaper nonunion labor was “what made the project work.” Interview with Lawrence Hall, supra note 191.
222. The study noted the lack of parking lots, off-street loading areas, and the lack of trees along the street. See UPPER STATE STREET ACTION PLAN, supra note 188, at 9.
225. Stanley J. Venoît, City seeking $346,000 for State Street project, NEW HAVEN REG., June 29, 1980, at 17; interview with Robert S. Frew, supra note 199; see also Upper State Street targeted, supra note 181 (discussing types of public improvements). By comparison, the City used $12 million in state grant money to improve the State Street roadway between Trumbull Street and the Coliseum. Fund to Aid New Business, UPI Newswire, Aug. 26, 1987 available in LEXIS, News library, Allnews file.
227. The budgeted sources for public improvement funds are as follows:
- City of New Haven bonds $400,000
- Conn. Dept' of Transportation grant 66,000
- US Dept' of HUD-CDBGs 86,000
See 1982 NCRP REPORT, supra note 192, at 34. The actual sources may have varied from these budgeted figures. The $66,000 State Department of Transportation grant was earmarked for the construction of parking lots along Upper State Street. Id. The source of the remaining $98,000 is not indicated in available City records.
228. See Janet Koch, 27 social service panels to share $680,740, NEW HAVEN REG., Feb. 6, 1984, at 16 (stating that New Haven was expected to receive $4.5 million under CDBG program); see also Janet Koch, DiLieto favors Science Park for grant funds, NEW HAVEN REG., Feb. 25, 1987, at 31 (stating that
Later, the City began to funnel federal CDBG funds to the Upper State Street district for use in "promotions, joint advertising and market studies."\footnote{229} In January 1982, the Association applied to the City for Community Development funding to underwrite promotional activities,\footnote{230} and the City granted the Association $25,000.\footnote{231} The City provided the Association federal block grant funds annually for the next seven years, in amounts ranging from a high of $30,000 (1986) to a low of just under $7000 (1989).\footnote{232} The Association applied the money to pay the salary of a full-time director, to rent office space and defray miscellaneous administrative costs, and to furnish advertising intended to draw shoppers away from suburban shopping malls.\footnote{233} After four years of declining grants, the City failed to give the Association a grant in 1990.\footnote{234} Shortly afterwards, the Association folded.\footnote{235}

Federal funds were also indirectly available to property owners through the historic rehabilitation tax credit. At the time of the NCRP, a twenty-five percent federal tax credit was available for expenses incurred in the restoration of certified historic structures; a twenty percent credit was available for expenses incurred in restoring a building more than forty years old.\footnote{236} Because Upper State Street was not placed on the National Register of Historic Places (a prerequisite of eligibility) until September 7, 1984, expenses for

\footnote{229. 1982 NCRP REPORT, \textit{supra} note 192, at 32-33. In granting the funds, the Aldermen typically described the funds for use "[t]o continue residential and commercial improvements in the Upper State Street area through fundraising, provision of business support, coordination of street improvements and maintenance, and crime prevention." \textit{J. BD. OF ALDERMEN, CITY OF NEW HAVEN}, part I, at 576 (1987).}

\footnote{230. \textit{Farnham, \textit{supra} note 168, at 19.}}

\footnote{231. \textit{J. BD. OF ALDERMEN, CITY OF NEW HAVEN}, part I, at 102 (1982); 1982 NCRP REPORT, \textit{supra} note 192, at 34.}


\footnote{233. Interview with Robert S. Frew, \textit{supra} note 177.}

\footnote{234. Gwendolyn Freed, \textit{Down, But Not Out}, \textit{NEW HAVEN ADVOCATE}, May 21, 1992, at 6. The Upper State Street Association split into two entities during the late 1980s after some merchants strenuously objected to the Association’s proposed assessment of membership fees. Davies & Dixon, \textit{supra} note 182, at 40. Factions were drawn roughly on generational lines: Older area merchants thought promotional efforts were sufficient, while younger property owners (most of whom came into the area in the late 1970s) wanted to spend additional funds on advertising and promotional events. The former group split off in the mid-1980s to form the State Street Association, led by Rhea DuBois, one of the founders of the Upper State Street Association. \textit{Id.} The group dissolved shortly thereafter. \textit{Id.; see also} Carol A. Leonetti, \textit{Upper State Street development: Shining star has lost some luster, NEW HAVEN REG.}, July 26, 1987, at 1. The latter group continued on until 1990, and ultimately folded when the City ceased awarding block grant money. Davies & Dixon, \textit{supra} note 182, at 42. In 1993 Susan Frew, wife and business partner of Robert Frew, revived the Upper State Street Association. \textit{Id.} at 44.}

\footnote{235. Freed, \textit{supra} note 234; Davies & Dixon, \textit{supra} note 182, at 42.}

\footnote{236. 26 U.S.C. \textsection\textsection 46(a)(2)(F), 48(g) (1982). A 15% credit was also available for expenses incurred renovating 30-year old buildings. However, the buildings renovated under NCRP were all well over 30 years old.}
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rehabilitation in this area did not qualify for the twenty-five percent tax credit until after NCRP had closed. Placement on the National Register was not, however, a prerequisite to eligibility for the twenty percent credit. Eligibility to use the tax credit depended on one's tax liability, so it is difficult to determine the extent to which the property owners made use of the credit. It is likely, however, that the credit encouraged development in at least a few instances.

Long after NCRP closed, redevelopment continued on State Street. The success of city-sponsored efforts aroused the interest of private developers. In 1983, the City sold developer Andrew Consiglio a one-and-a-half acre site on State Street which had been left vacant since Lee-era urban renewal efforts for $19,000. Consiglio invested about $1 million in the property, building two two-story brick structures consisting of over 10,000 square feet of commercial space and several apartments. In early 1984, another private developer completed a cluster of twelve townhouse condominiums on the vacant

237. United States Department of the Interior, National Park Service, National Register of Historic Places Evaluation/Return Sheet for Upper State Street Historic District (Sept. 7, 1984) (on file with author). See generally supra note 70 and accompanying text. The full 25% credit was available only for "certified rehabilitation," i.e., rehabilitation that "the Secretary of the Interior has certified to the Secretary [of the Treasury] as being consistent with the historic character of such property or the district in which such property is located." 26 U.S.C. § 48(g)(2)(C) (1982). To qualify, developers had to forego use of certain processes and materials that would render a structure ineligible, such as sandblasting and use of vinyl or aluminum replacement windows. See interview with Robert S. Frew, supra note 177 (stating that 1010 State Street was not eligible because of sandblasting); interview with Fredrick Russo, supra note 178 (discussing use of replacement windows versus rehabilitating existing windows). Fred Russo believed that the extra five percent (over the credit available for 40-year-old buildings) was not worth the extra expense and decrease in functionality inherent in "certified rehabilitation." Id.


239. Robert Frew believes that the vast majority of the redevelopment done in the area was undertaken by small property owners who did not have sufficient income to take advantage of the credits. Interview with Robert S. Frew, supra note 199; see also interview with Kenneth J. Kraus, supra note 199 (stating that tax credits played limited role in redevelopment). Frew formed two limited partnerships that did take advantage of the tax credits. These limited partnerships developed five properties: 922-28, 938-40, 969-71, and 1010-12 State Street, and 8 Mechanic Street. Interview with Robert S. Frew, supra note 177. (Because 8 Mechanic Street consists only of apartments and no commercial space, Frew did not receive NCRP funds for its rehabilitation.) Fred Russo disagrees, and believes the federal tax credit made a difference at the margin. Interview with Frederick Russo, supra note 178.

240. Fred Russo, who renovated four buildings in the Upper State Street area, indicated that the credit assisted him in renovating. Interview with Frederick Russo, supra note 178. Only one of these buildings, however, was renovated during the NCRP period. Id.

241. Jane Adams, Developer seeks State Street glow, NEW HAVEN REG., Aug. 4, 1985, at F1 ("Five years ago [Andrew] Consiglio said he would never have purchased land on State Street, but now he considers this project [on State Street] one of his best investments."); see also Horwitz, supra note 182, at 2 (developers explain that "[t]here is a momentum building of Upper State Street as a viable economic entity").

242. Adams, supra note 241, at F1. The buildings that had occupied the site were torn down as part of the City's 1968 State Street redevelopment program. State Street Nomination, supra note 12, at 7-1.

243. Adams, supra note 241, at F7. Consiglio subsequently built several large additions to these structures, the cost of which is not reflected in the $1 million figure. The structures, located at 911 and 937 State Street, currently consist of approximately 16,464 gross square feet of commercial space and approximately 8229 gross square feet of apartment space. Figures are compiled from records held in the New Haven Tax Assessor's Office.

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former site of a sausage factory on State Street, thus "put[ting] the finishing touches on the revitalization of upper State Street."244 Since then, redevelopment has been a continuing process, as it would be in any healthy neighborhood. City tax records reflect a steady stream of remodelling on Upper State Street,245 although the pace has understandably slowed as the neighborhood improves and the average quality of the building stock rises. Some of the remaining vacant lots along the street were filled by new building in the late 1980s.246 In the early 1990s, the Hygienic Ice Company plant was converted into street-level retail space and upper-story office space.247

Through the mid-1980s, the Upper State Street area enjoyed an economic renaissance, marked by low apartment vacancy rates, new construction, and the arrival of new businesses.248 However, an economic downturn that began in late 1987 and lasted through the early 1990s took its toll on neighborhood merchants.249 The area experienced a series of store closings.250 In 1990, the Upper State Street Association ceased operations after the City failed to award it the block grant money it had used to finance its operations.251 The modest upturn in the economy that began in 1991 brought a number of new stores to Upper State Street.252 Significant building renovations continued.253 In 1993, a newly arrived merchant organized a festival in Upper State Street, thus resuscitating a short-lived tradition from the mid-1980s.
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heyday of the Upper State Street Association. The Association was itself revived in 1993, and resumed performing one of its traditional roles as the informal enforcer of group norms, convincing a merchant who had wanted to sell pornography that he should locate elsewhere.

IV. PUBLIC-PRIVATE REDEVELOPMENT: LEARNING FROM NEW HAVEN

A comparison of the redevelopment efforts in Ninth Square and Upper State Street suggests that fine-grained redevelopment produces results faster, and with smaller public expenditures, than does coarse-grained redevelopment.

A. Delays and Blight

One of the principal expected benefits of the Ninth Square project is the "[r]evitalization of [a] highly visible area of downtown which is now blighted and deserted." Matthew Nemerson, then-President of the New Haven Chamber of Commerce, noted the irony of PLP making this claim: "It wasn’t empty until they decided to fix it!" The prospect of large-scale redevelopment often has an immediate negative effect on the neighborhood to be redeveloped. Tenants and landlords, knowing they will be forced out soon, have less incentive to perform long-term maintenance from which they will not benefit. Merchants may find it aggravating to conduct business in such areas because they are uncertain exactly when they will be asked to leave. So it was in Ninth Square when talk of redevelopment began in the early 1980s. Tenants complained that landlords, planning to renovate their buildings, would renew leases only on a month-to-month basis. This drove some to leave, but the mass exodus did not begin until MBA became involved. MBA envisioned a massive, one-step overhaul of the entire area. MBA believed that major demolition and reconstruction efforts would be necessary, rendering Ninth

254. Fried, supra note 249, at 21, 25; Davies & Dixon, supra note 182, at 44.
255. See supra note 234.
256. Davies & Dixon, supra note 182, at 44. The group had previously banded together to keep out businesses that were perceived as a threat to the ambiance of the neighborhood. Indeed, the threat of a McDonald’s restaurant opening in the neighborhood was one of the factors that originally led the merchants to organize. See id. at 16-17.
257. With apologies to Robert Venturi. See ROBERT VENTURI, LEARNING FROM LAS VEGAS (1972).
259. Interview with Matthew Nemerson, supra note 84.
260. Similarly, the planned linking of the Connecticut Turnpike (I-95) and the Derby Turnpike (Route 34) with the Oak Street Connector resulted in "disinvestment and flight" from the planned route. The road was never completed, but the area nevertheless became blighted. Fainstein & Fainstein, supra note 8, at 41; see also Gideon Kanner, Condemnation Blight: Just How Just is Just Compensation, 48 NOTRE DAME L. REV. 765 (1973) (discussing analogous problem of condemnation blight).
261. See Adams, supra note 64, at 9.
Square effectively uninhabitable. Consequently, from the beginning of its involvement, MBA planned to evacuate the area completely before construction began. The evacuation process began in 1987, and ended five years later. By then, Ninth Square was empty except for a few struggling businesses on its fringes.

Years of delay caused by planning and financing holdups caused this intentional, temporary vacancy to transform Ninth Square into a blighted area. Independent redevelopment efforts in the square have been frustrated by the slow pace of MBA's primary redevelopment. The pervasive blight caused by vacancies in MBA buildings—and the attendant graffiti—suppressed business in the area, rendering independent redevelopment economically infeasible. While in 1988 MBA expected about eight to ten buildings to be developed pursuant to “joint development agreements” with independent developers, only two projects were actually completed. The businesses that located in renovated buildings often found that they could not hold on until MBA completed neighborhood redevelopment. The eyesore of the surrounding buildings made it difficult for businesses in the area to attract customers. Furthermore, the area’s appearance reinforced negative perceptions of the city as a dangerous, ugly place; even the City’s deputy director of the Office of Housing and Neighborhood Development, Jennifer Pugh, conceded that the rampant graffiti made the area look “like nobody cares, and it looks like the city is out of control.” One of the factors consistently mentioned in post-

262. See Catherine Sullivan, Downtown button shop makes way for rehab, NEW HAVEN REG., Nov. 11, 1990, at F1. As discussed earlier, financial constraints later caused this to become a two-step renovation, but the entire area was evacuated nonetheless. See supra notes 86-87 and accompanying text.

263. See supra note 130 and accompanying text.


265. See supra text accompanying notes 122-37.

266. See supra text accompanying notes 117-21.

267. See Mark Zaretsky, City Hall’s battle with graffiti escalates, NEW HAVEN REG., Jan. 19, 1993, at 3, 4.


269. See supra note 118.

270. See, e.g., Sullivan, supra note 268, at A1; Catherine Sullivan, 9th Square in race to raise funds, NEW HAVEN REG., Jan. 13, 1993, at 19. 22 (store owner frustrated because “I’m the only business on my street”); Izenstein, supra note 67, at 16 (business owner stating that policymakers’ indecision has destabilized businesses in Ninth Square). Many other businesses in the area have shut their doors. See Leonard J. Honeyman, Openings a 9th Square trend, NEW HAVEN REG., June 6, 1990, at 53 (listing several new businesses, several of which have since closed: Chinatown, Sportstuff, and Boston Bonnie’s Restaurant); Laura Johannes, Merchants’ plans and dreams go poof!, NEW HAVEN REG., Mar. 30, 1991, at 1 (discussing how businesses struggle while awaiting redevelopment).

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mortem analyses of the Macy’s closing is the blighted appearance of neighboring Ninth Square.272

By comparison, the Upper State Street project encountered no comparable period of significant delay, and thus suffered no period of redevelopment-induced blight before developers began making improvements. The speed with which the project was undertaken was made possible by the streamlined planning process, which involved far fewer players than were required for the Ninth Square project. Because the Upper State Street project involved more modest sums of money, funding sources engaged in commensurately less extensive scrutiny of each stage of the project, thus creating less red tape and fewer delays.

B. Dislocation of Business

Fine-grained redevelopment appears generally to be less traumatic to existing merchants and residents than coarse-grained redevelopment. By their nature, fine-grained redevelopments are generally more gradual than coarse-grained projects: Construction times tend to be staggered rather than simultaneous, because they are set by many different owners and developers. Construction in the area, therefore, is not as likely to render the area uninhabitable.273 The shorter delays characteristic of fine-grained development also make it more likely that merchants will be able to leave a location and, after a short hiatus, reoccupy their old shops without the interruption taking a significant toll on the customer base.274 Rising rents from redevelopment will necessarily cause a gradual displacement of less lucrative businesses, just as happened to many junk and antique shops on Upper State Street.275 Nevertheless, fine-grained redevelopment is less likely to result in a mass exodus of the type caused by MBA’s expulsion of businesses from Ninth Square.

Mass displacement of business should be avoided, as it tends to have negative consequences both for the city and for the businesses themselves. Some of the businesses forced out of Ninth Square were unable to find suffi-

272. See Sullivan, supra note 4, at F8 (merchants say that “[t]he city should have worked harder to clean up the downtown . . . clean up blighted buildings . . . it’s hard to ignore the blighted buildings, especially in the Ninth Square”); Higgins, supra note 4, at A20 (stating that city efforts to draw people downtown “have not been enough to overcome problems with . . . graffiti-marred empty buildings”).

273. Several businesses remained in Upper State Street throughout redevelopment, including Soup Bone’s Package Store, Quality Fish Market, Modern Apizza, the Snack Shop, DeRose’s Vegetables, Aars Yafa Treasures, and Edward’s Lunch. Compare UPPER STATE STREET ACTION PLAN, supra note 188, at 72, 78 with property records in New Haven Tax Assessor’s Office (reflecting business’s continued presence through mid-1980s).

274. One of Fred Russo’s tenants did so, and is still operating at the same location. Interview with Frederick Russo, supra note 178.

275. Interview with Robert S. Frew, supra note 199.
cient commercial space in New Haven and relocated to the suburbs.276 Others were unable to find affordable space elsewhere and closed.277 Redevelopment thus had the perverse result of permanently removing businesses from downtown.278 For many of these businesses, the relocation took them away from their traditional customer base and may have jeopardized their long-term viability.279 It is difficult to determine the impact of the Ninth Square exodus. Nationally, between twenty-five and forty percent of businesses forced to relocate by renewal projects fail.280 A study of 785 New Haven firms relocated by Lee-era redevelopment found that forty percent left town or folded.281 While certainly some of these would have failed anyway because of the risky nature of small business,282 dislocations undoubtedly increase business failures.

C. Funding and Incentives

Redevelopment in Ninth Square is heavily subsidized by federal, state, and local government. Every source of financing is publicly subsidized in some way; even the “leveraged” private funds raised from the limited partnership effectively come out of federal coffers.283 The final cost to the public, which will depend on whether the project defaults on debt payments, is certain to be tens of millions of dollars. In contrast, the direct public cost of redeveloping Upper State Street was about $1 million, including all public improvements.284 This is less than a third of what the Ninth Square developers budgeted for the syndication costs of limited partnership interests.285

276. Eileen Schuffman, Long-time city businesses victimized by Ninth Square project, NEW HAVEN REG., Dec. 31, 1989, at B2 (letter to editor) ("We were told our business would have to relocate elsewhere, even out of New Haven because they didn't have a large enough place for it to be relocated in."); Sullivan, supra note 262, at F7 (naming various businesses that have relocated elsewhere).
277. Sullivan, supra note 262, at 63; Vogelstein, supra note 129, at 6.
278. See Sullivan, supra note 262, at 63 (discussing several businesses closing); Vogelstein, supra note 129, at 6 (same).
279. Admittedly, the undesirable effects of relocations could be ameliorated with sufficient advance notice and City-provided relocation assistance. Anecdotal evidence from the Ninth Square relocations indicates that even several months (or years) of notice and financial assistance only partially mitigate these effects. Acme Office Furniture, in particular, has had considerable trouble relocating. See Schuffman, supra note 276, at B2.
280. See FRIEDEN & SAGALYN, supra note 29, at 35.
281. See Fainstein & Fainstein, supra note 8, at 44 (citing RAYMOND WOLFINGER, THE POLITICS OF PROGRESS 319 (1974)).
282. One oft-cited statistic reflecting the risks small businesses face is that 50% of such businesses fail in their first year, and that 80% fail in their first two years. See, e.g., Roxanne Davis, Minority Owners Advise Using Available Resources, CAPITAL DIST. BUS. REV., Nov. 30, 1992, § 1, at 16. These rates presumably would be lower for established businesses.
283. See supra text accompanying note 116. The limited partnership interests consist of bundles of historic rehabilitation and low-income housing federal tax credits.
284. See supra Table 2 accompanying notes 211-14.
285. See supra note 144 and accompanying text.
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Fine-grained projects may make more efficient use of public money because they take greater advantage of private property owners’ ability to pay. Many landowners fail to maintain properties in top condition not because of unwillingness to invest or a lack of capital, but because of a lack of confidence in the neighborhood.286 Many of the merchants in Upper State Street had money to spend on rehabilitating their buildings, but were reluctant to invest money unless their neighbors were committed to doing the same.287 Rather than large-scale subsidies, this group of landowners needed only minor intervention to break the local “prisoners’ dilemma” and provide a catalyst for further development. In addition, the typical relationship between city and developer, which can often be unfavorable to the city,288 is reversed. The city tends to hold a more powerful bargaining position than small landowners: Each individual property owner has relatively little to offer the city, and so it is unable to exact the same concessions that a large developer could.289 Finally, smaller individual subsidies are less likely to cause large distortions in the real estate market. Whereas large subsidies may make possible projects that would never otherwise survive in the free market, small subsidies function as “seed money” to make marginal projects viable.290

D. Architectural and Marketing Unity

One of the reasons advanced for developing Ninth Square as one large project, rather than piecemeal, was the pervasive concern that the area should develop as a “carefully planned whole” for architectural and marketing purposes.291 As the Upper State Street neighborhood demonstrates, piecemeal redevelopments can also maintain architectural integrity. Architects active on the NCRP Design Committee were determined that buildings in the area should

286. See supra note 206. See generally Frank F. DeGiovanni, An Examination of Selected Consequences of Revitalization in Six U.S. Cities, in GENTRIFICATION, DISPLACEMENT AND NEIGHBORHOOD REVITALIZATION 73-74, 83 (J. John Palen & Bruce London eds., 1984) (reporting results of Clay’s 1979 study, supported by author’s study, which found that investment by inmovers caused original owners to improve their properties in 33% of revitalized neighborhoods in six cities studied, including Hartford, Conn.).

287. See DiLieto, supra note 187, at 1 (noting “substantial private commitment” to rehabilitation); interview with Lawrence Hall, supra note 191 (noting merchants had resources for redevelopment); supra note 206 and accompanying text.

288. The generally weak market for commercial and residential space in downtown areas and the fierce competition between municipalities for development often puts the developer in a strong bargaining position vis-a-vis the city. Lynne B. Sagalyn, Public Profit Sharing: Symbol or Substance, in CITY DEAL MAKING 139, 147 (Terry Jill Lassar ed., 1990).

289. Interview with Matthew Nemerson, supra note 84.

290. Id.; interview with Robert S. Frew, supra note 199. Public subsidies for Ninth Square have been justified on the grounds that it would be “absolutely impossible” for Ninth Square to attract private funding. Catherine Sullivan, City won’t abandon Ninth Square, NEW HAVEN REG., Apr. 7, 1991, at F1 (quoting Hartford developer Martin Kenny). If the market “absolutely” would not finance a project, it poses serious questions about the project’s economic viability.

291. Ninth Square is turning point for city, NEW HAVEN REG., July 15, 1988, at 14; interview with Kathleen Etkin, supra note 50.
be restored to their original appearance. The primary instrument of enforce-
ment of architectural norms was the granting or withholding of city subsi-
dies. In addition, concerned area architects (each of whom was also a
property owner) consulted informally with neighborhood property owners, and
worked to dissuade property owners from executing nonconforming design
plans. The result is a neighborhood of tastefully appointed shops and apart-
ment buildings.

V. CONCLUSION

Cities have suffered a hard twelve years under Presidents Reagan and Bush,
as they were weaned from the rich diet of federal aid to which they had
become accustomed under Presidents Eisenhower, Kennedy, and Johnson. The
Clinton Administration is widely expected to put cities back “on the agenda”
by increasing federal funding to cities and promoting broader state support.
Although there is a growing literature suggesting that government-subsidized
redevelopment projects are often wasteful and ineffective, politicians will
find it difficult to say “No” to additional funding because the alternative—the
almost-certain spread of urban blight—is so distasteful. New redevelopment
projects are proposed every day. In this age of scarcity, if public monies
are to be spent, city governments must make the most of available funds.

This Article has examined two neighborhood revitalization projects in the
City of New Haven. Based on an analysis of these two schemes, it appears that
a neighborhood can be successfully revitalized without major assistance from
municipal, state, or federal authorities. The Upper State Street development
demonstrates what may be a more efficient way for governments to proceed
in the future. Rather than providing a substantial portion of funding for a large
renewal project, governments would provide smaller subsidies to a larger

292. See supra note 200 and accompanying text.
293. See Dudar, supra note 199; interview with Robert S. Frew, supra note 199.
294. See, e.g., Robert C. Ellickson, Inclusionary Housing Programs: Yet Another Misguided Urban
Policy?, in INCLUSIONARY ZONING MOVES DOWNTOWN 83, 88, 86 (Dwight Merriam et al. eds., 1985);
BERNARD J. FRIEDEN & MARSHALL KAPLAN, THE POLITICS OF NEGLECT 24-25 (1975); FRIEDEN &
295. See, e.g., Christopher Keating, State’s enterprise zones targeted for debate at development
hearing, HARTFORD COURANT, Feb. 27, 1993, at C6 (reporting on bill in state legislature proposing $17
million in bond money for revitalizing two abandoned Bridgeport theaters to make the area into a cultural
center); Tony Levine, Wounded Waterbury: No Place to Go but Up, N.Y. TIMES, Dec. 6, 1992, § 13, at 1, 4 (reporting plans to erect $100 million
shopping mall on the site of former brass factory); Catherine Sullivan, Mall backers pressing for state
funding, NEW HAVEN REG., Mar. 23, 1993, at A3, A14 (discussing proposed Taubman mall in New Haven
over Route 34 connector, which would entail $90-100 million in government subsidies); Joseph P. White,
DETROIT MAYOR BACKS TIGERS’ OWNER IN PITCH FOR NEW BASEBALL COMPLEX, WALL ST. J., Mar. 28, 1994,
at B4B.
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number of developers, pursuing a “fine-grained” pattern of redevelopment. By doing so, they would maximize their leverage of private capital, while simultaneously minimizing the market distortions inherent in the provision of public subsidies. Moreover, by reducing the number of participants in any single redevelopment project, they would shorten the time to completion, thereby decreasing the exposure of developers and businesses to market fluctuations. Fine-grained redevelopments of the sort undertaken piecemeal by small developers and property owners in the Upper State Street district of New Haven promise to be both faster and cheaper than more heavily subsidized coarse-grained redevelopments.