

**White Paper:
A Framework for Land Readjustment and Equitable Redevelopment
at the Canal Crossing Redevelopment Area
and
Case Study**

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Introduction

This white paper presents a land assembly method for urban renewal projects known as *land readjustment* and its potential use by the Jersey City Redevelopment Agency (JCRA) at the Canal Crossing Redevelopment Area. The basic principle of land readjustment is that property owners within a designated redevelopment area participate in a public-private joint venture where the municipal redevelopment authority (hereinafter referred to as the “Agency”) will pool, rezone, and redistribute the land or shares in a common land trust amongst the contributing property owners. The Agency then provides valuable redevelopment rights to the property owners along with the new parcels or shares. The property owners may subsequently monetize these assignments through sale of their portion of the property and the associated up-zoned redevelopment rights to developers, and/or by retaining an equity stake in the redevelopment.

The underlying assumption is that land readjustment and its emphasis on negotiated agreements and collective bargaining by the existing property owners will create additional value for the property owners beyond what may have been realized using more traditional land assembly methods such as voluntary exchange or eminent domain. It is market demand for space in the targeted redevelopment area that drives the economics of the project under any land assembly scenario. The Agency’s device to capitalize on this demand is to provide increased density of development through up-zoning along with infrastructure and public amenities that can further increase land value. Land readjustment is the vehicle that is used to capture that increased value through a more efficient and equitable approach to urban redevelopment.

In this way, land readjustment can provide financial incentives for property owners to voluntarily participate in urban redevelopment projects and generally promote equity in the redevelopment process. Agencies may use land readjustment to supplement or possibly replace voluntary exchange and eminent domain as land assembly methods. Both of these methods may often be neither efficient nor equitable, and can often cut existing property owners off from the economic potential of their land.¹

In exchange for the granting of the up-zoned redevelopment rights the Agency may retain a portion of the land to provide the necessary infrastructure and public facilities for the redevelopment area and to recover project-related costs. For the Agency, land readjustment is particularly useful for urban renewal projects where the existing parcel layout and ownership patterns are disorderly and potentially prohibitive to the planned redevelopment. The free reparation process allows the Agency to redraw the property boundaries to a more rational shape in accordance with the redevelopment plan.

A common feature of land readjustment is that each property owner typically receives a smaller parcel after readjustment than the one they originally had. Despite the reduction in ownership area, the property may be significantly higher in value than before readjustment because of the higher potential for development given the new zoning, increased densities, new infrastructure, and new parcel shapes aligned to maximize the planned development. In an urban renewal context, the value distribution may take the form of other types of property, such as units in multi-family housing, rather than as actual parcels.

Many industrialized countries, including Japan, Australia, South Korea, Germany, and Israel, actively use land readjustment as an important land assembly method. In these countries, land readjustment rules may even be part of national redevelopment and property rights law.² Although not commonly used in the United States, the method of land readjustment notably played an historic and important role in the

creation of the District of Columbia where George Washington used the method in 1791 to assemble the land necessary to complete the plan for the future site of the federal government. Through negotiation with land owners of these areas in Virginia and Maryland, which were predominantly farmland at the time, the first President created a land trust to hold the undeveloped property within the District boundaries. The country was then allowed to purchase land to construct public buildings at a fixed cost per acre and take additional land as necessary, without charge, to build public amenities and infrastructure. The federal government returned the land remaining to the original owners who could then develop it at a significantly higher value than would have been possible without the improvements brought by the federal government to their former land.³

As can be seen, the process of land readjustment is not unlike the traditional use of land trusts to add value to property by grouping it with other adjoining parcels for development purposes, except that land readjustment proceeds under a detailed, municipally controlled redevelopment plan that maximizes value, emphasizes fair distribution of development benefits and costs, and uses impartial and transparent implementing procedures and regulations. Given the increased interest in protecting private property rights and avoiding the use of eminent domain to fulfill public redevelopment goals since the landmark Supreme Court ruling *Kelo v. The City of New London* in 2005, land readjustment provides the Agency significant opportunity for developing a more equitable and fair publically led redevelopment process.

A Framework for Land Readjustment and Equitable Redevelopment

JCRA has a policy objective to make the Canal Crossing redevelopment project beneficial and *equitable* to the existing long-term property owners of the area who have invested time and money in maintaining the community over the years. Having preserved the character and continuity of the neighborhood, the property owners should now benefit from their long-term commitment and be able to maximize the capture the increasing value of their properties. The process that provides this benefit should be inherent to the redevelopment project in a way that works best for the property owners, and at the same time is fair to all the citizens of Jersey City and to the developers who seek to complete the goals of the redevelopment plan through new investments of their own.

Land readjustment, with its focus on property owner participation, offers opportunity for JCRA to create and distribute development rights *equally* so that the current property owners may benefit along with private developers. Land readjustment is, at its core, a process that increases the development rights of property owners. JCRA may use land readjustment as an alternative or supplement to eminent domain and voluntary exchange at the Canal Crossing redevelopment project to address and fulfill each of the its redevelopment equity criteria.

Canal Crossing Redevelopment Equity Criteria

1. *The redevelopment process should respect, preserve and protect equally the property rights – including redevelopment rights - of all the existing property owners.*

This applies especially to protecting the property owners from the use of eminent domain except where necessary to achieve the goals of the redevelopment plan. With the use of eminent domain, the incremental value increase of the taken property accrues strictly to the taking Agency since the Agency is required only to pay current fair market value to the property owner, which usually

will not incorporate the increased final value of the redeveloped property. Voluntary exchange may also have a negative effect as the developer is usually in a better situation in negotiation to capture the increase in value since the developer often has the benefit of funding, information and expertise unavailable to the typical property owner. Land readjustment can protect the property and redevelopment rights of the property owners by putting them at an equal position of power with the Agency and developer in negotiating their deal.

The land readjustment process may also be designed to avoid a situation where the owners may become permanently displaced by the development. The Agency may accomplish this by providing well-defined rights to the property owners to obtain new properties in the same general neighborhood and reenter into business if they wish.

2. *Property owners should be able to receive economic benefits that accrue from redevelopment in proportion to their land holdings.*

The free reparcellation process that JCRA will use in the Canal Crossing redevelopment area contains the potential to create economic winners and losers amongst the current property owners depending on the future planned use of their land. Property owners whose land holdings end up with denser permitted development then, say, one whose property JCRA zones as a public park would have an unfair economic advantage. To equalize this situation, JCRA may use land readjustment as a mechanism in the redevelopment process to distribute equally the total increased value of the land amongst the property owners in proportion to the land contributed to the redevelopment project.

3. *Each property owner should have an equal voice in the plans to redevelop the area and have the opportunity to remain invested in their neighborhood.*

Retention of the original property owners as participants in the redevelopment also can alleviate the potential political problem of displacement. The original owners would have a direct opportunity to participate in the planning process and express dissatisfaction with the proposed readjustment scheme. Retention of the right to develop at will and as desired, subject to the redevelopment plan might lead to less contention and opposition.

To insure fairness and community engagement it should be left to a majority or supermajority of the property owners in the area whether or not the land readjustment project should move forward at all, or if more conventional land assembly methods and financial incentives, though less equitable, should be used. The reason for requiring a threshold of consenting owners to approve land readjustment is to let the community decide whether the project will benefit the neighborhood. If the majority of affected parties believe that land redevelopment will not bring benefits to the community, imposing a land readjustment scheme will open the door for political and legal challenges. These are the undesirable effects of exercising eminent domain that land readjustment is supposed to avoid.

4. *All property owners should benefit equally and share equally in the costs of new infrastructure and public facilities for the redevelopment project.*

The provision of new infrastructure is one of the main public contributions to the redevelopment project and the source of much of the increased value that the property owners and developers will realize. Therefore, they should share in the costs and benefits, and to the greatest extent

possible, make the project a self-financing source for the construction of project-related roads, parks, and utilities throughout the area, through proceeds derived from the land redevelopment itself.

By emphasizing equity and supporting the property owners in benefiting from potential value increases of their property, JCRA creates a vested economic interest for the property owners in the project's future. This may gain more cooperation and willing participants in the redevelopment scheme. Whether or not a particular property owner seeks subsequently to redevelop their newly plotted land parcel, the property owner may trade or sell the land to others who have the capability to redevelop it. Their property therefore continues to have increasing worth throughout the process and this might provide motivation for cooperation.

A Land Readjustment Framework

Land readjustment can be an important tool for revitalizing urban areas. The existing property owners act in coordination with the Agency to pool their property in order to accomplish a detailed redevelopment plan to better the community and provide economic benefit. Land readjustment and the intense collective negotiation involved allow the Agency to reparcel the land more efficiently and equitably to suit the project.

Some conditions that would be necessary to implement a successful land readjustment strategy would include a strong real estate market, up-zoning allowing more intensive land use, enabling legislation to guide and control the process, an existing level of trust or working relationship amongst the property owners, and an Agency with the institutional capacity necessary to manage the intense planning and negotiation of a land readjustment project.

Further, a detailed plan or framework is necessary to insure that the Agency addresses all of the important functions of this method. The following land readjustment framework demonstrates how the Agency and property owners can work together to create such a process and how the redevelopment equity criteria developed in the preceding section can be realized.⁴

1. Initiation of the land readjustment process as part of the redevelopment plan - The Agency may initiate land readjustment for an urban renewal project where existing parcel layout and ownership patterns are prohibitive impediments to the redevelopment plan. These impediments may include irregular blocks and streets that isolate urban areas from adjoining neighborhoods and commercial centers, or insufficient public infrastructure and facilities necessary to support current use and sustain growth. The redevelopment plan defines the physical extents of the project and identifies the property owners and leaseholders that fall within it. The Agency may choose to guide the process itself or alternatively establish a new authority specifically to manage the redevelopment. The property owners, in cooperation with the Agency might also decide to set up a non-profit community development corporation to act as the guiding authority for the land readjustment activities.
2. Planning and measuring - Having established the project boundaries in the redevelopment plan, the Agency completes a survey of the existing parcels within those boundaries, confirms land titles, and re-plats the entire area determining future uses and providing for the efficient location of infrastructure, public facilities and private parcels. The Agency may use this process to identify

buildings for demolition or preservation, street closures, and proposed public areas. This process may involve the property owners and community at large in an elaborated planning process that identifies the larger economical and quality-of-life goals for the stakeholders. This arrangement differs significantly from voluntary exchange and the use of eminent domain. These methods traditionally rely on separate negotiations between the developer and the individual property owners to accomplish the redevelopment, whereas in land readjustment collective bargaining in a public forum is the dominant mode.

3. Identifying land for public use - The Agency must re-plot the area to meet development goals while simultaneously negotiating with property owners over the size and location of parcels that the municipality will retain for infrastructure and to cover project costs, and those that the property owners will receive in return. This may be a complex and iterative process. The property owners may incur substantial legal costs and the Agency may have to make a significant commitment of municipal resources. The Agency may decide to break the entire redevelopment area into “readjustment zones” to prioritize and stage the work, and reduce the number of parcels and property owners for a given development project. The Agency can use computerized land development tools such as AutoCAD and Geographic Information System (GIS) programs to calculate plot areas before and after readjustment. That Agency may define maximum plot-size reduction percentages in advance or balance the reductions amongst the property owners to achieve redevelopment goals. In an urban renewal context, the Agency may already be a property owner and may participate in the land readjustment process in much the same way as private property owners. In this case, it may not be necessary for the municipality to retain as much (if any) land for the location of public facilities or as a means of cost recovery.
4. Total market value estimation - This step provides an economic model for capturing the increased value of the readjusted land due to the redevelopment project by estimating initial and final values of the project. This model estimates the future market value of the readjusted plots and costs of infrastructure taking into account internally controlled factors such as efficient re-platting and increased density as well as external factors such as a generally growing local or regional economy, rising or falling land values, development of new industries, and increased transportation options.
5. Project Cost Estimation – Project-related costs include the construction of infrastructure and public facilities, administrative costs incurred by the public agency, consulting and professional service fees, and financing costs. The amount of cost-recovery land available may not cover the project costs, which may have to be financed using government subsidies such as grants, bonds, or tax increment financing.
6. Value Distribution – The portion of the land that is not taken for public use or cost recovery are reallocated back to property owners by the Agency with the necessary title modifications, usually located as nearly as possible to the originally position, and with secondary rights (for tenants or mortgagors) protected. At the end of the project, the original property owners receive new property worth at least what they contributed and typically, far more. The Agency may do this by returning to owners a plot of serviced land that is smaller but has a higher value than the land put into the project. Because an assessment of future land value can never be exact, one allocation method is to ensure that the proportionate value of each owner’s landholding relative to the total value of all lots is the same before and after the project.

When the Agency redevelops an urban area into a mixed-use, transit-oriented development, property return may not necessarily be as reconfigured parcels. For example, if the land use is multi-family development, property owners could receive one or more units in exchange for the land they contribute. For other types of commercial real estate development, property owners could own shares in a land holding association that could retain fee-simple ownership of the entire land area and enter into a ground lease with the development entity that builds the project. This would give the property owners the flexibility to retain or sell their interests and allow them to participate in the value created by the redevelopment. Because property owners receive a share in the future redeveloped property, they can benefit fully from the financial and other windfalls that result from redevelopment of the whole neighborhood.

7. **Implementation** - The Agency funds the infrastructure costs through the sale of reserve or cost-equivalent plots or by other means. The Agency must then guide and encourage the formation of development associations and joint ventures between the property owners and private sector developers according to the redevelopment plan. After the return of private land lots to participating owners, the agency auctions off the reserved public land and uses the proceeds to repay the construction costs of local infrastructure. The Agency divides any surplus among all participating owners. If a deficit occurs, owners contribute additional funds. When all debts are settled, the community may choose to dissolve the land readjustment authority. The local government then resumes the responsibility of maintaining the newly built infrastructure and providing other services to the community with the revenue collected from property taxes. The land readjustment project is officially completed.

The framework provided demonstrates that the process may not always be quicker than eminent domain or voluntary exchange, because convincing and negotiating with property owners and developers to settle on an equitable plan may take time and effort. However, land readjustment does offer enhanced opportunities to promote equity all throughout the process.

Paying for Infrastructure and Project Cost Recovery

One clear advantage of a land readjustment scheme for the Agency over other publically led land assembly methods is that the Agency does not necessarily have to use its own money to purchase land for public use. Essentially, there are no acquisition costs for land contributed by the property owners to the readjustment project for infrastructure and public use and no upfront outlays of money required to option, purchase property outright, or pay fair market value in the case of eminent domain.⁵

The ability for a project to leverage land readjustment to pay for some or all of the infrastructure and project costs will depend on several factors that the Agency must accurately estimate or measure and then allocate appropriately. These factors include construction costs, amount of reserve land available, and the projected value of the land. Development exactions or pro-rata fair share assessments on property owners and developers for each development project in the redevelopment area or the use of infrastructure financing districts may have to cover any shortfalls.

Urban renewal projects typically have much lower relative increases in land value than green field development or conversion of agricultural land, therefore land readjustment projects in urban areas may have difficulty recovering all project-related costs or covering the cost of new infrastructure. However, if

the Agency is already a property owner in the redevelopment area, the Agency may pool the land with the property of other property owners, thereby decreasing the total amount of land the Agency must dedicate for the location of public facilities or as a means of cost recovery.

Important Considerations for a Successful Land Readjustment Project

Not all urban renewal projects will be good candidates for land readjustment. For land readjustment to succeed there must be certain favorable economic conditions for the project as well as procedural and regulatory rules in place to guide the process.

Since land readjustment requires intensive voluntary participation and cooperation by the property owners, they must believe that the economic fundamentals of the project are strong. It must be obvious to the property owners that the final profits will be greater than they would receive otherwise without land readjustment and is worth the negotiating time they will be devoting to the project. The premise of a strong land market with enough demand for redevelopment of the entire area and with relatively rapid adsorption of the new commercial and residential spaces can support this argument. The planning step must allow for intensive land use and zoning modifications that increase density in order to create enough additional value to make the project economically feasible.

The Agency must be able to make a strong case that the final value of the land exceeds the value of the existing capital improvements. If the current property owners are engaging in profitable business through direct investment or through commercial tenants, they will be unlikely to participate voluntarily in any redevelopment scheme that trades a sure and consistent stream of short-term profits with a promise of capital gains sometime in the uncertain future, no matter how equitable it may be. The lure of economic benefits must be strong to make a land readjustment project viable.

From a regulatory standpoint, there must be impartial, transparent and efficient processes established by the Agency to manage the land readjustment project and resolve potential disputes between property owners and the Agency, as well as between the property owners themselves who may have competing development plans. Enabling legislation can strengthen these processes. The project must rest on reliable ownership records, title definitions and trained and credible assessors. Procedurally, there must be excellent communication amongst project participants including regular meetings of civic organizations, property owner associations, and development teams. There must also be a high potential for agreement amongst the property owners, which will depend strongly on how well organized they are, how good their internal communication is and how successfully they can align and homogenize their interests. A group of owners with little trust, and no capacity to communicate with one another and enforce mutual agreements may not effectively participate in land readjustment at all. Therefore, supporting cooperation among property owners by the Agency is vital for land readjustment projects to succeed.

Having strong regulatory and procedural processes in place will not necessarily guarantee a successful outcome, but it would be difficult to have a successful outcome without them. The project participants must agree on important elements of a land readjustment process for it to move forward. The following sections provide some examples of issues that will have to be determined through collective negotiation.

What are the rules for participation by property owners in the redevelopment?

The Agency will need to establish a cogent set of rules to set the terms of participation by property owners in the redevelopment area that sets out clearly the benefits, costs and obligations of the land readjustment project. One model is the set of rules established by the former California redevelopment agencies for owner participation in redevelopment projects. These rules generally provide property owners a preferential place in the redevelopment process, though it does not necessarily exclude developers or speculators who have only recently acquired the property and do not necessarily have a long-term association with the project area.

In general, these rules set forth conditions for participation by the property owners in the redevelopment of property in the project area in conformity with the redevelopment plan. The rules extend reasonable preference to persons who are engaged in business in the project area to reenter in business within the redeveloped area if they otherwise meet the requirements prescribed by the redevelopment plan. The rules also provide alternative provisions for redevelopment of the property if the owners fail to participate in the redevelopment as agreed. An Owner's Participation Agreement (OPA) executed between the property owner and the Agency with the specific rules for the redevelopment project formalizes the participation. Annex 1 of this paper provides a detailed analysis of these rules.

How will the land readjustment process manage holdout property owners and free riders?

Holdout property owners are a feature of every redevelopment project, and provide special challenges to a system like land readjustment that seeks to promote equity and property rights. Lack of cooperation by a few property owners seeking to maximize their benefits or just obstruct the redevelopment process can hinder the entire land assembly process. There is also the problem of "free riders" who, just through their position inside of the redevelopment area where a beneficial land readjustment scheme will take place, will benefit from the improved conditions even if they contribute nothing or refuse to participate.

Therefore there must be some special land readjustment rule that may exclude non-cooperating owners and to compel participation.⁶ Under this legislation, dissenting owners must either concede to the will of the majority (or super-majority) of owners or sell their properties to the land readjustment agency. The purpose of the law is to facilitate negotiations and resolve owners' collective action problems through consensus building instead of through litigation.

Although government action may ultimately have to coerce property transfers from holdouts, the process under land readjustment differs from typical eminent domain action. By its use of a grassroots level democratic decision-making process, a majority or supermajority vote from consenting owners allows land readjustment to proceed in the first place. Therefore, although there may be a small minority of dissenting owners, it is their fellow neighborhood property owners who will make the decision to go ahead with the land readjustment and redevelopment in the project area. It would not be the Agency acting on its own.

How will the Agency, property owners and developers form the joint venture?

For large redevelopment areas, it is reasonable to suppose that distinct development projects will proceed over the course of many years. Therefore, the Agency, working in concert with the property owners,

should establish development zones with a relatively small number of joint ventures with a limited number of property owners and parcels. The Agency should continue to play the role of coordinating the various joint venture projects to support the efficient and proper handling of infrastructure and other overlapping features, but keeping the development projects defined to restricted groups of owners may assist in moving land readjustment projects along quicker. It also may prove true, that a few early successes with groups of property owners who have good communication and aligned interests will serve to inspire and guide other groups of property owners who are not as well situated or skilled to understand and manage the risks of land assembly.

As with the larger land readjustment project itself, a majority or supermajority of property owners (or of owners who own the majority of the land) must agree to the development project to move forward. Assuming the Agency and property owners can arrive at such an agreement, the lands within the readjustment zone would come under the temporary control of the land readjustment authority. The “pooling” stage of the land may involve a step in which the existing subdivision is officially abolished and the plots are joined into a single mass, presumably to be registered under the name of the Agency. For some projects however, the pooling stage may not exist as an actual formal step; the land appraisers and land development consultants could carry out the process virtually on the drawing board and in their calculations.

The joint venture, which may include property owners and the Agency, along with private investors and developers, would then move forward to develop their property under their development plan and according to the rules of the joint venture agreement and terms of the Agency Owner Participation Agreements. The legal structure of the joint ventures could take many forms. It could be a non-profit community development corporation, a single-purpose limited liability company, a partnership, or a for-profit joint-stock corporation. The main activities of the joint venture would be financing and ensuring the execution of infrastructure improvements (in coordination with the Agency and any local municipal infrastructure planning authorities or utilities), property development and property management of the redevelopment in accordance with the approved redevelopment plan, and a development strategy submitted to the appropriate governmental bodies.

Once the joint ventures have completed the development and redistributed the property to the members of the joint venture, the venture can then move to dissolve itself and liquidate any reserve holdings or liabilities.

This question also brings to the fore how the risk of development should be shared between the parties. Any development project is fraught with risk and vulnerable to market downturns. A consideration of the risk factors and how risk-adjusted returns may be used to balance the involvement of the land owners at different levels should be considered. Many of the participating property owners will not be seasoned real estate developers and might be subject to poor decisions on managing their risk without support and basic investing education.

How will the Agency distribute the “value capture”?

As described in this paper, the typical reallocation of property back to the members of the joint venture in a land readjustment scheme is in the form of readjusted plots. The returned plots are smaller than the size of those originally contributed as the Agency retains pieces to site and pay for infrastructure and project-

related costs. In urban core redevelopment projects that result in mixed-use, transit oriented development like Canal Crossing, the property return may not be as reconfigured parcels, but rather in some other form of property of equal or greater value.

For example, with multi-family development land use, property owners could receive one or more units in exchange for the land they contribute. For other types of commercial real estate development, property owners will own shares in a land holding association that could retain fee-simple ownership of the entire land area and enter into a ground lease with the development entity that builds the project. This would give the property owners the flexibility to retain or sell their interests and allow them to participate in the value created by the redevelopment.

There are three general principles involved with reallocation of property that the Agency should follow no matter how the members of the joint venture redistribute the value. These general principles include proximity, proportionality and balancing.⁷

1. Proximity - Each reallocated plot or property should be as close as possible to the original plot.
2. Proportionality - The proportionate value of each plot (whether vacant or built up) relative to the total value of all the plots in their original state should be as close as possible to its share of the total value of all the plots after reallocation, i.e. the proportional share before and after the reparcellation should be as similar as possible. For example, if a parcel represented 5% of the *initial* value of the assembled property going into the joint venture, the owner is due at least 5% of the *final* value of the project.
3. Balancing - If it turns out that keeping the proportionate share of all the plots is not feasible, property owners who are in the "plus" must pay the excess value to the Agency, and property owners in the "minus" have the right to receive the difference. These payments may act as *balancing fees*.

On paper, the "givings" and "takings" may seem well balanced. In practice however, they may not work out so evenly. Property owners in the "minus" might be quick to claim their fair share from the Agency. It also might be difficult to extract payments from property owners in the "plus." Therefore, the planning agency should do everything possible to configure the parcel alignments or property values so that the result will fully abide by the proportionality rule without the need for monetary payments. While at times this may require compromise with the optimal configuration, there is usually enough leeway in land use planning and subdivision to accommodate alternatives. Therefore, the Agency may be constrained in the way it creates zones to make sure there is balance.

How will stakeholders who are not property owners be involved ?

In urban redevelopment zones, there may be many residents and businesses that are not property owners but may in fact constitute the majority of the impacted population by the project. Many of the residents and businesses may have contributed equally to the preservation of the neighborhood and community over the years. To insure a truly equitable process, a mechanism for including these interests in negotiations should be considered. Along with guaranteeing to the property owners a right to re-enter into business, the same preferences might also be extended to long-term leaseholders (see Annex 1). A method

for distribution of a portion of the value capture to these people may also be appropriate under certain circumstances.

What Can Go Wrong?

Despite its extensive use internationally, and its great potential for providing equity to urban redevelopment projects, land readjustment is still a largely untried and experimental land assembly method in the United States. The sections below provide a discussion of potential problems that JCRA may encounter in the attempt to use land readjustment at the Canal Crossing Redevelopment Area.

Erroneous Perception of Land Readjustment as “Un-American” and “Anti-Capitalist”

Although land readjustment holds great potential for overcoming significant development challenges in the United States, the method has not caught on in this country despite intensive study and support from within the planning community since the early 1960s when academic journals, newspapers and magazines first reported the method in this country. Following the important Supreme Court eminent domain decision in *Kelo v. The City of New London* in 2005, various supporters of land readjustment put forward the method as a good alternative to compulsory land takings that could preserve a civil approach towards urban redevelopment.⁸ One of the most important planning organizations that has supported land readjustment in the United States is the Lincoln Institute for Land Policy, which has sponsored several conferences and major publications on the subject since the 1980s, including the development of draft implementing statutes⁹.

It is worth considering why, after nearly 50 years of discussion and experimentation, land readjustment has not taken hold in the United States despite the large number of opportunities where it had great potential to add value to difficult redevelopment processes. One of the best known and often-cited examples where land readjustment may have been used was in resolving the chaotic local land markets caused in several states by the pre-platting of tens of thousands of acres in the 1950s and 1960s, with no provision for infrastructure and in subdivision patterns totally inappropriate for actual development. This practice particularly damaged states such as Florida, California and Hawaii, who subsequently put considerable effort into determining methods to unwind this condition.¹⁰ The states, for a time, investigated land readjustment as a potentially effective way of addressing these problems. The Lincoln Institute even hosted a conference on the application of land readjustment to pre-platting in Florida and published a regular national journal to keep track of land readjustment developments in the US.

However, despite all the effort, California, Florida and Hawaii all failed in attempts in the 1980s to pass enabling legislation to make land readjustment part of the local redevelopment law. The Lincoln Institute has indicated that one reason that land readjustment failed to take hold in these cases was because existing real estate interests saw land readjustment as a “radical and even threatening concept” and successfully held back this method through the political process.¹¹ The use of collective action is generally problematic in the United States where property rights and free will may be overriding political considerations.

Another argument is that the private sector using voluntary exchange is the best method for land assembly for purely economic development reasons as the private sector has the skill and expertise to evaluate risk

more effectively, to understand the complexities of real estate development, and produce sustainable economic development. Government, in this argument, should maintain the limits of its traditional, complementary role in economic development by extending regulatory, infrastructure, and tax incentives where appropriate. An over-involvement of government in what the public may see as a scheme that overwhelmingly benefits private interests was and continues to be the main animus that motivates the intense backlash against the *Kelo* decision.

Diminishment of Public Control

In concept, participation by property owners in the planning and redevelopment process of urban renewal strikes more of a balance between individual preference and publicly desirable development. What the municipal planning agency gives up by providing a structure for an owner-based land readjustment project is traditional public control over redevelopment - other than what the redevelopment plan and existing land-use regulations may accomplish. The removal of RFP-based procedures to attract developers, for example, could result in less design and project control for the planning agency since a joint venture operating under consensus rules is participating in these decisions.¹² If the goal of the redevelopment is to achieve specific and large public-private development goals that is out of reach of the public entity acting on its own, land readjustment may have disappointing and unintended results that could diminish the public confidence in the project as a whole.

Retention of Bad Actors

If the purpose of the redevelopment is to rid the area of certain types of existing development, then a purposeful inclusion of property owners in the redevelopment through land readjustment may in fact be counterproductive. Retaining the existing owners as future participants may harm some redevelopment plans because these owners do not have the means, ability or motivation to engage in redevelopment on the scale contemplated by the public sector. Frequently, speculative investors who lack a long-term interest in either the neighborhood or the property, and who may lack the skills to redevelop property, control urban land targeted for redevelopment. In some cases, existing owners and their tenants may themselves be the target of removal. Where a changeover in private ownership is the goal, land readjustment may fail.

Major Resistance from Non-Consenting Owners

Major resistance to land readjustment projects will exist in situations where it threatens important vested economic interests. In addition to those owners who object to redevelopment for ideological reasons, opposing property interests might include those who overpaid for their property during a time of speculation and will lose out from a reallocation at lower property values. Opposition may also come from owners with floor-area ratios beyond what current zoning would allow, owners with valuable yet non-permitted grandfathered uses, owners of environmentally contaminated sites, and others with preferences for the status quo whatever that might be.

Property owners might also bring eminent-domain challenges to enabling statutes meant to deal with non-willing property owners because the end use contemplated by the Agency does not necessarily provide for

a quantifiable or visible public good, especially if the readjustment and redevelopment create no significant public use.

Failure of the Economic Case for Readjustment

The Agency must carefully evaluate the economics at every stage of a land readjustment project to ensure that it can make a case for the property owners to receive sufficient profit to compel their participation and cooperation in the process. Important market conditions such as the amount of available developable property, the condition of the land market, and demand for development in the area will govern the economic case. However, analysis on a more detailed level may also reveal inherent weaknesses in the project that are not at first revealed by high-level study. For example, even with a high reserve rate with the existing land, there may not be sufficient good quality urban space for infrastructure and public facilities. There may be many properties that are too small to provide reserve land. In these cases, the Agency must be prepared to compensate the property owners with cash or other property options. There may also end up being substantial transaction costs – especially related to negotiation.

The property owners may lack the financial sophistication to effectively negotiate value distribution and cost recovery. Existing property owners may not be comfortable taking on development risk. Existing contractual obligations to tenants and lenders may make participation by property owners difficult. Although from a distance the economics for redevelopment may look good, bringing it down to the individual participatory level may reveal problems that could ultimately sink the project.

Unknown Tax Implications

Since land readjustment is not yet a common method used in the United States, the implication of tax law on this method is untested and unknown. Although the local municipality can take proactive action to create beneficial tax schemes within their authority by waiving title transfer fees and local taxes, the Agency should complete a thorough investigation of the federal Tax Code and IRS rules regarding the exchange of property for investment purposes before commencing with any land readjustment joint venture schemes.

Legal Complications and Prohibitions

Land readjustment in some respects mirrors a land conservation device known as Transfer of Redevelopment Rights (TDR), by which state implementing statutes or easements may separate the development potential of a site from its title and make it available for transfer to another location. Although the principle use of TDR is to provide conservation easements on farmland, some TDR programs provide “equalization” in urban redevelopment scenarios. The potential use of TDR at the Canal Crossing Redevelopment Area was reviewed as a possible alternative as an equity mechanism, but was found to have sufficient legal restrictions in the State of New Jersey to make its use prohibitive.¹³ Although land readjustment was not a factor in the development of the New Jersey TDR statutes, the similarity between the systems should be investigated to determine possible legal ramifications of the use of land readjustment or developing implementing regulations. Annex 3 of this paper provides a discussion of the potential use of TDR in the Canal Crossing Redevelopment Area.

Potential Alternatives to Land Readjustment

No other land assembly method promotes equity in urban redevelopment with such focused effect as land readjustment. It is not impossible to inject equity into other land assembly or redevelopment methods, but they generally do not include a system of public sector led owner participation, as does land readjustment. Therefore, these other methods may be open to the vagaries and injustices of the real estate market on one hand, and the Agency right to take property through eminent domain for the public good on the other. The discussion below outlines other potential land assembly methods for the Canal Crossing Redevelopment Area.

- Transfer of Redevelopment Rights: As discussed in the preceding section, Transfer of Redevelopment Rights (TDR) is a method used in some development scenarios, defined by state statute or local ordinance that can accomplish certain specific goals related to promoting equity in the real estate market. The basic premise behind TDR is that the land development rights are separable from property ownership rights and that property owners could be empowered to transfer development rights from one land parcel to another. One such TDR program includes those designed to provide compensation to property owners to offset the loss of part or all of the property market value due to a public planning action. Other TDR programs provide “equalization”, which aims at an equal treatment of property owners and of their property rights by granting the same amount of development rights to property owners, independent of the use designated for their land parcels.
- Land Banking and Acquiring Tax Delinquent and Unclaimed Lots: The Agency can acquire lots by all the possible means such as direct purchase, acquisition of tax delinquent lots, etc. The underlying strategy is that the Agency gets into the land banking business by acquiring land and trading it with the private sector to help achieve assemblies.
- Provision of Incentive Zoning: The Agency can provide incentives to developers that may include density bonuses and increased FAR (floor/area ratio), that would be applied to properties that are assembled and converted. The Canal Crossing Redevelopment Plan permits a redeveloper to construct a “bonus” market rate unit for every low, moderate or work force income unit constructed. In order to accommodate the bonus market-rate units, the plan may permit additional incentives including a proportional increase in allowable height or a reduction or elimination of otherwise required parking.
- Financial incentives: The municipal planning authority can provide financial incentives, such as tax rebates, for the benefit of those who assemble and convert lots. The Agency may also provide financial incentives to homeowners who would be subject to an assembly effort. This incentive could take the form of real-estate tax portability. Revenue Allocation Districts could generate assessment revenues that would provide additional financial incentive.
- Public Private Partnerships for Land Pooling: The Agency can help the private sector to create – and possibly participate in – land trusts and benefit-sharing arrangements, to the extent allowed by New Jersey law.

Conclusions

This white paper examines the potential benefits and costs of the use of a *land readjustment* process at the Canal Crossing Redevelopment Area as a method for land assembly that promotes equity for the citizens of Jersey City, existing property owners, and potential developers. The purpose of this examination has been to weigh the potential effectiveness of land readjustment to fulfill the equity criteria of the JCRA at the redevelopment area over other more conventional methods such as voluntary exchange and eminent domain. This paper has provided an “equity” framework for land readjustment and provided guidance for the recognition and promotion of factors that can lead to successful uses of the method and conditions where the method may be likely to fail. JCRA must further investigate the potential for using land readjustment successfully at Canal Crossing to support equity goals. Annex 2 of this paper provides an example of the land readjustment economics and value distribution model that JCRA may use in this context.

No model of urban renewal, no matter how equitable or fair in design and intent, can protect a public sector development project from civic opposition, litigation from economic and political interests, budget uncertainties, conflicts of interest and business fraud, real estate market supply and demand vagaries, collapsed deals and extended renegotiations, partnership tensions, and negative media coverage. Nor can it eliminate the problems development may cause by uprooting tenants and pricing them out of gentrifying neighborhoods. Whether or not land readjustment is selected for use at the Canal Crossing redevelopment area, the difficult realities of land development will persist.

Further, land readjustment cannot redefine the risks inherent in a development project. By their participation in the redevelopment by maintaining an equity stake, property owners become subject to an equal amount of risk. This type of risk is one that real estate professionals traditionally manage and may not be appropriate for the typical property owner. What land readjustment can offer, however, is a broader sharing of urban redevelopment's inevitable risks and perhaps a model for civic economic engagement in urban renewal.

***Annex I:
Land Readjustment Case Study at the Canal Crossing Redevelopment Area***

The purpose of this case study is to demonstrate the basic mechanics of land pooling and value distribution of land readjustment. The selected study area coincides with “Phase 2” of the proposed six development phases identified by Benecke Economics in their study on development of an Infrastructure Financing Plan for Canal Crossing. The use of this configuration of parcels as the study area does not mean that development in this area will necessarily happen as a unit or even should happen as a unit. The selection of this area is only to provide an example development scenario that may present some typical elements of the actual future development process at Canal Crossing.

Figure 1: Canal Crossing Redevelopment Area



Background

The Canal Crossing Redevelopment Area is approximately 111 acres and is located in the southeastern section of the City of Jersey City. Development in this area is predominantly dilapidated industrial structures mixed with areas of vacant land and surrounded to the north and west by neighborhoods of predominantly residential and light commercial development. The Hudson-Bergen Light Rail (HBLR) system runs along both the northern and eastern borders of the area. The Westside connector branch of the HBLR forms the northern border of the area and the Garfield Avenue station is located at the north-west

corner. The Bayonne line forms the eastern border of the area. HBLR will add a new light rail station on the Bayonne line at the eastern end of Caven Point Avenue.

Redevelopment of the area will proceed under the rules and guidelines imposed by the Canal Crossing Redevelopment Plan adopted in 2009 and last amended in February 2013. The Jersey Redevelopment Agency (JCRA) conducted an intensive and inclusive community engagement process during the drafting of the Redevelopment Plan and it therefore represents the interests of the community for the future course of this area. The Redevelopment Plan envisions a non-industrial future for the community with a focus on higher-density, mixed-use development and a diversity of housing and building types.

Housing developed within the Canal Crossing neighborhood will include market rate housing, work-force housing and housing affordable to persons of low and moderate income. Construction will include both rental and for-sale housing. Building sizes will vary from low 2-4 story buildings to medium size buildings 6-8 stories high. Most of the new construction will consist of low to mid-rise buildings, four to eight stories in height. However, the Redevelopment Plan allows construction of some high-rise structures, of 12 stories or higher, in close proximity to the light rail stations. In order to promote sustainable development within the Canal Crossing neighborhood, the Redevelopment Plan requires all new buildings to incorporate “Green Building” technologies and development practices.

Redevelopment of Canal Crossing will encourage the upgrading of roadways and utilities in the surrounding area and encourage reinvestment and neighborhood stability. Currently, the project is in an engineering and design phase as part of a HUD Community Challenge Planning Grant project that will define new parcel structure and provide plans for the installation of new and upgraded infrastructure and public amenities. An existing local municipal Infrastructure Planning Group (IPG) is leading the infrastructure planning effort. The IPG membership includes JCRA, the Jersey City Divisions of Planning and Engineering, and the Jersey City Municipal Utilities Authority (JCMUA). The IPG plans for utilities needed to support redevelopment plans and will serve as the steering committee to guide the consultant procurement and management efforts for implementation of infrastructure design and construction for this project.

The intent of the Redevelopment Plan is to create an open network of interconnected streets within the redevelopment area to provide access to all portions of the Canal Crossing neighborhood, and with the neighborhoods to the west and north. Urban scale parks are also proposed. A prime open space feature of the Canal Crossing neighborhood will be the creation of “Canal Way”, an expansive green way built over the former bed of the Morris Canal.

The Study Area

The study area is approximately 705,000 square feet or just over 16 acres, which is approximately 15% of the total available land in the Canal Crossing Redevelopment Area. Figure 1 shows the location of the study area at the west boundary of the redevelopment area. Figure 2 presents a larger scale map of the study area showing the existing parcel layout. The area consists of twelve (12) parcels and segments of four (4) existing city streets, including Garfield Avenue, Carteret Avenue, Caven Point Avenue, and Halladay Street. The parcels comprise 515,700 square feet (s.f.) and the City street rights-of-way comprise 189,300 s.f. of area. Table 1 presents ownership and property information for the study area.

Figure 2: Current Parcellation in the Study Area



The study area includes a mix of privately and publically owned land. JCRA owns the largest parcel in the study area (21510-2), which is 26.1% of the total parceled land (i.e. the land area not including the street segments). A high percentage of publically owned property as part of the land readjustment mix is advantageous for private property owners as it could mean that private property owners will have to provide less property or land value for infrastructure. Having a large mix of public land can also facilitate the land assembly into larger parcels.

Table 1: Current Property Ownership in the Study Area

Map ID	Block	Lot	Location	Owner	Parcel Size (s.f.)	Percent of Total Land
21510-1	21510	1	846 Garfield Ave.	846 Garfield Avenue, LLC	27,400	5.3%
21510-2	21510	2	824 Garfield Ave.	Jersey City Redevelopment Agency	134,600	26.1%
21510-3	21510	3	45 Halladay St.	Halladay St Corp	94,400	18.3%
21510-4	21510	4	25 Halladay St.	PPG Industries, Inc.	51,400	10.0%
21510-5	21510	5	15 Halladay St.	PPG Industries, Inc.	30,500	5.9%

Map ID	Block	Lot	Location	Owner	Parcel Size (s.f.)	Percent of Total Land
21510-7	21510	7	784 Garfield Ave.	Michael, John	9,100	1.8%
21510-10	21510	10	802 Garfield Ave.	Pace, Clement	10,100	2.0%
21510-11	21510	11	816 Garfield Ave.	Fishbein Family Partnership	11,000	2.1%
21510-39	21510	39	800 Garfield Ave.	Mid-Newark L.P.C/O	93,100	18.1%
22704-9	22704	9	829 Garfield Ave.	Senatore, Thomas & Charles	50,300	9.8%
22704-8	22704	8	843 Garfield Ave.	Senatore, Thomas & Charles	1,600	0.3%
22704-7	22704	7	113 Carteret Ave.	Senatore, Thomas & Charles	2,200	0.4%
Study Area Total:					515,700	100.0%

The developable area will include six (6) new blocks formed from the available land. The total area of the new blocks is 324,000 square feet. The new surface infrastructure planned for the study area includes widening of the existing streets, and adding one new through street (Claremont Avenue), two local access streets (Garfield Mews and Halladay Mews), and a public park (“Park 2/Claremont Green”). The proposed park will encompass 46,100 square feet. The existing City streets within the study area will remain City streets, though land taken from adjoining parcels will widen them. The construction of Canal Way will widen the street to a doublewide (126 feet) “green way” with a landscaped median.

The new street network within the study area, including the new street segments and widened existing segments, totals 334,900 square feet in area. The new street land area, minus the existing street land area is 145,600 s.f. Figure 3 presents a diagram of the proposed layout superimposed on the area and Figure 4 shows the proposed development diagrammatically. Table 2 lists the new blocks and surface infrastructure.

The Land Readjustment Process

There are certain aspects of land readjustment that may add value above a development scenario that would proceed under the conventional land assembly methods of voluntary exchange and eminent domain. As the Redevelopment Plan requires development of each block as a unified whole, land readjustment may reduce transaction costs by significantly reducing the amount of negotiation necessary for a developer to acquire sufficient land to build.

For example, a developer for Block 08 would have to assemble parcels 22704-7, 22-704-8, and 22704-9, which would be fairly straightforward but still subject to hold out landowners who may be looking to maximize their financial benefit by being the last property owner to sell. However, the developer for Block 07 has a much more difficult task of assembling their property whereas pieces of four parcels 21510-2, 21510-10, 21510-11, and 21510-39 are required, which would make acquisition more complicated and costly. Without an overarching collective bargaining and negotiating structure in place that is part of the land readjustment process, the negotiations to assemble the blocks will be complicated and may jeopardize the overall project goals, perhaps forcing the use of eminent domain. As a reference, Figure 5 shows an overlay of the existing parcel structure over the proposed new blocks.

Figure 3: Proposed Parcellation in Study Area



There are parcels, not included in Table 1, that actually are located both inside and outside the study area boundaries (see Figure 5). For example, to complete the widening of Carteret Avenue, land that is currently is part of parcels 21501-17 & 21501-18 will be necessary. As can be seen in Figure 5, only very small portions of these parcels are inside of the study area where they overlap with the new outline of an expanded Carteret Avenue. Most of the parcel land is located outside of the study area. For the purposes of the case study, these parcels are not part of the evaluation, to keep the analysis simpler. However, JCRA and property owners will ultimately have to address these types of refinements due to the proposed layout over the current disorderly ownership patterns. The use of land readjustment greatly simplifies these types of situations by allowing the property owners to pool land and thereby dissolve the parcel boundaries before land assembly.

Table 2: Proposed New Blocks and Surface Infrastructure in the Study Area

New Developable Blocks			
Map ID	Block	Lot	Square Footage
06	21510.01	1	25,000
07	21510.02	1	41,900
08	22704	7.01	53,900
09	21510.03	1	78,400
18	21510.04	1	63,500
19	21510.05	1	61,300
New Blocks Total:			324,000
New Public Park			
Park 2/Claremont Green	21510.01	2	46,100
Parks Total:			46,100
New or Widened Streets			
Carteret Road			65,100
Canal Way			74,700
Halladay St			54,000
Halladay Mews			9,900
Garfield Ave			68,000
Garfield Mews			8,100
Claremont Ave			35,400
Caven Point Ave			19,700
Existing City Street Land Area (subtracted)			(189,300)
Streets Total:			145,600
Study Area Total:			515,700

Build Out Value

The market value of the land under the redevelopment scenario is the “value return” to the property owners. By foregoing immediate sale of the property to a developer, as would be required under land readjustment, the property owners contribute their land to the project in expectation of a greater return at a future time. As indicated in the white paper, the process of land readjustment in this respect is not unlike the traditional use of land trusts to add value to property by grouping it with other adjoining parcels for development purposes. The principle difference to a traditional land holding group or development land trust is that the land readjustment proceeds under a municipally controlled redevelopment plan that maximizes value, emphasizes fair distribution of development benefits and costs, and uses impartial implementing procedures and regulations.

Basic real estate economics indicates that the market value of a property is equal to the residual value of the project, also known as Net Present Value (NPV), determined by multiperiod discounted cash flow (DCF). The DCF is a forecast of future cash flows derived from the development, minus the development, construction and overhead costs, discounted to present value at a selected rate of return.¹⁴ In absence of the existing redevelopment plan, property owners might expect to sell their property under normal

circumstances and in a competitive land market, to an interested developer at the market price under their current zoning.

Figure 4: Proposed Parcellation in Study Area (Diagram)



With the Canal Crossing Redevelopment Plan in place, property owners are aware of the new development potential of their land. With this knowledge, they would expect to receive the new market value of their property under the valuable up-zoned conditions. Determination of this market value is highly dependent on unknown factors including the cost of land development (including any necessary environmental remediation), construction, and future market conditions in the lease-up, operational and reversion phases of the property life cycle. Property owners may be tempted to ask for the current pricing of multifamily or commercial space in Jersey City; minus whatever they might interpret the development costs to be. Developers will want to pay a lot less than that to manage their risk and provide for an appropriate developer's fee and profit.

In the land readjustment scenario, the property owners contribute their property to the joint-venture project and the opportunity cost of the deferred property sale becomes part of the to the DCF analysis as a development cost. The property owners then, once a DCF and NPV of the project can be worked out as partners, receive the agreed upon market value of their property.

An estimate of the market value of the property in the study area begins with quantifying the build out potential. According to build out estimated provided by T&M Associates, developers may build a maximum of 620 multifamily units on the six developable blocks. Table 3 provides the details and breakdown of the build out. The Redevelopment Plan provides the allowable square footage for each size unit. The average unit is 820 s.f. The total residential build out potential is 506,400 s.f.

Table 3: Allowed Residential Build Out in the Study Area

Map ID	# of 1 Bedroom Residences (units) 700 s.f.	# of 2 Bedroom Residences (units) 900 s.f.	# of 3(+) Bedroom Residences (units) 1100 s.f.	Maximum Residential (units)	Total Area (s.f.)	Average Area per Unit (s.f.)
06	20	17	3	40	32,600	820
07	39	35	6	80	65,400	820
08	49	44	7	100	81,600	820
09	78	70	12	160	130,800	820
18	59	52	9	120	98,000	820
19	59	52	9	120	98,000	820
Total:	304	270	46	620	506,400	820

The total potential commercial build out space (including retail and office space) is 144,400 s.f. Table 4 presents the block-by-block breakdown of the build-out.

Table 4: Allowed Commercial Build Out in the Study Area

Map ID	Total Area (s. f.)
06	4,500
07	31,100
08	56,800
09	52,000
18	0
19	0
Total:	144,400

Median sale prices for industrial, office, retail and multifamily residential property in Jersey City in June 2013 were researched using publically available information provided by Loop Net, a national commercial real estate broker.¹⁵ Table 5 lists the median sale prices per square foot by property type and the calculated cap rate given the median lease rate for June 2013. The estimated Net Operating Income (NOI) is 75% of the lease rate (accounting for taxes and other operating costs). The calculated cap rate is the sale price per square foot divided by the NOI.

Table 5 provides a comparison of the calculated cap rates for each property type to documented average cap rates for the Northern New Jersey real estate market as listed by CBRE in the Cap Rate Survey for February 2013.¹⁶ Each property type is compared to *Class A* assets (best-of-class product, attract larger,

top quality tenants with 5- and 10-year leases, often newer construction.) with a *Value-Added* leasing environment (underperforming property that has an occupancy level below the local average and/or is leased at below-market rents). The purpose of this exercise of checking the estimated land value against documented average cap rates is to provide a reality check and model for gauging the profitability of the land readjustment process.

Table 5: Median Sale Prices by Property Type in Jersey City, NJ

Property Type	Median Sale Price (\$/s.f.)	Median Lease Rate (\$/s.f./yr.)	NOI (\$/s.f./yr.)	Cap Rate	CBRE Listed Cap Rate Range
Office	\$230	25.00	18.75	8.2%	7.5% - 8.25%
Retail	\$228	30.00	22.50	9.9%	8.0%-8.5%
Multi-Family Residential	\$230	22.00	16.50	7.2%	5.0-5.5%

The total market value is the estimated land prices for each property type multiplied by the build-out potential square foot totals in Tables 3 and 4. The estimated total build out value is nearly \$150 Million or nearly \$12 Million per acre of developable land. Table 6 presents a summary of the calculations.

Table 6: Estimated Land Market Value in Study Area

Property Type	Price	Total Area (s.f.)	Total Market Value
Residential	\$230	506,400	\$116,470,000
Commercial	\$230	144,400	\$33,210,000
Total:			\$149,680,000

Calculation of Infrastructure Reserve Cost

In exchange for the granting of the up-zoned redevelopment rights, the Agency may retain a portion of the land or land value to provide the necessary infrastructure and public facilities for the redevelopment area and to recover project-related costs.

The estimated value of the planned surface infrastructure within the study area is \$6.6 Million. This includes \$5.1 Million for improvements to the streets and \$1.5 Million for construction of the public park. The estimated unit price for construction of the streets (including removal and replacement of sidewalks, curbs and pavement) is \$1,000 per lineal foot for streets up to 70 feet wide and \$2,000 per lineal foot for Canal Way, which is to be a doublewide avenue (125 feet) with a landscaped median.

Figure 5: Current and Proposed Parcellation Overlay

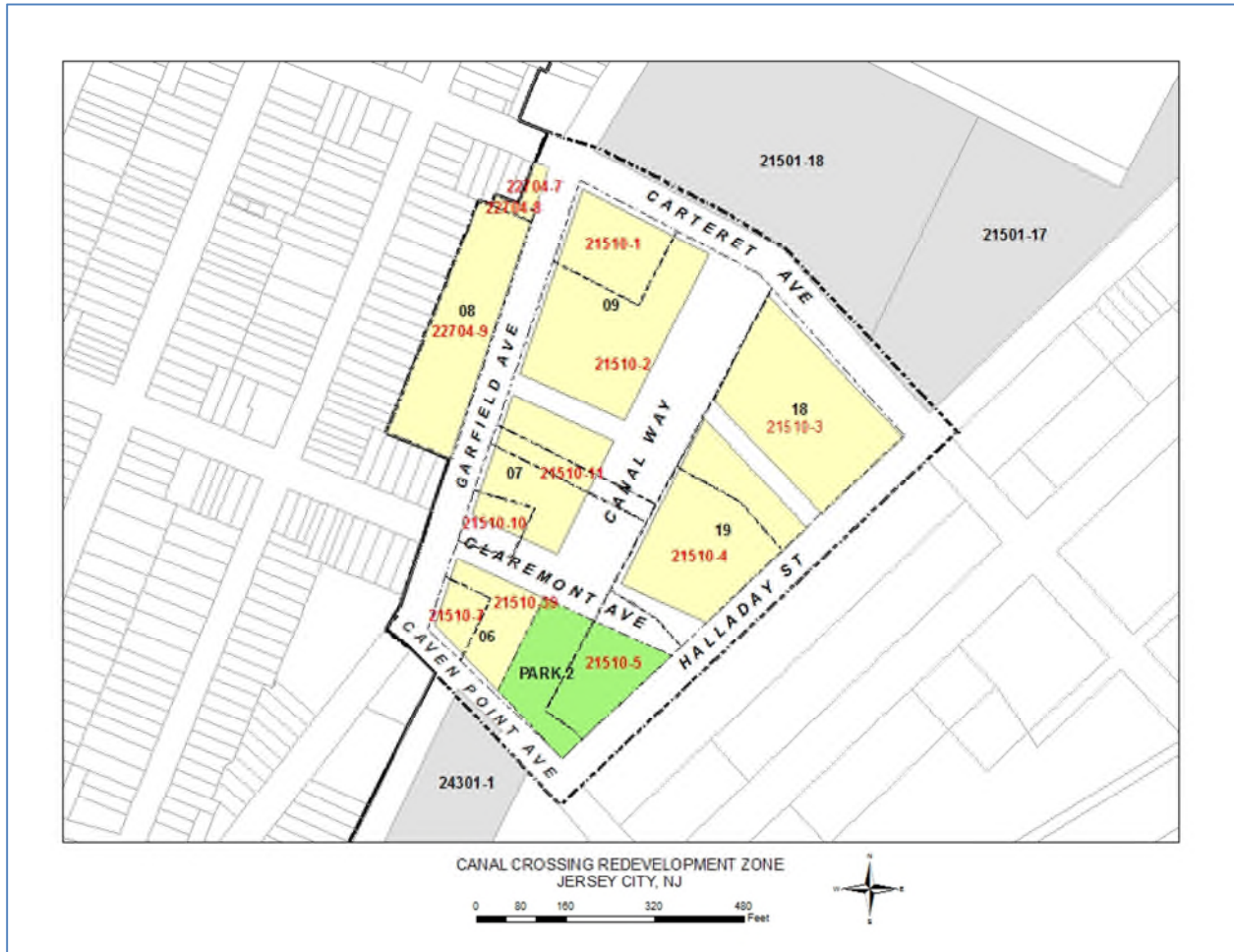


Table 7: Estimated Construction Costs for Surface Infrastructure in Study Area

Streets	Unit Price (\$/LF)	LF	Total Cost
Carteret Road	\$1,000	825	\$825,000
Canal Way	\$2,000	600	\$1,200,000
Halladay St	\$1,000	900	\$900,000
Halladay Mews	\$1,000	280	\$280,000
Garfield Ave	\$1,000	950	\$950,000
Garfield Mews	\$1,000	200	\$200,000
Claremont Ave	\$1,000	460	\$460,000
Caven Point Ave	\$1,000	325	\$325,000
Total:			\$5,140,000

Park	Unit Price (\$/LF)	SF	Total Cost
Park 2 / Claremont Green	\$32.50	46,100	\$1,500,000
Total:			\$1,500,000

Surface Infrastructure Total:		\$6,640,000
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The total residual market value of the land, including the outflows for the construction of the surface infrastructure costs is approximately \$143 Million. This final cost is a simplified estimated value and does not include other actual costs that may have significant effect on final residual value including environmental remediation and installation of subsurface infrastructure.

Table 8: Estimated Total Residual Value for Land in Study Area

Market Value of Land	\$149,680,000
Surface Infrastructure Cost	(\$6,640,000)
Total Residual Value:	\$143,040,000

Value Distribution

Given that the plan is to rehabilitate fully the redevelopment area, there may not be a return of property owners to the area in significant numbers. Therefore, rather than distributing the value of the land to the property owners as property (in the form of residential units or leasable commercial space), it may be appropriate for the property owners to form a real estate holding company that would enter into a joint venture with the developer to build the project. Each property owner would then receive shares proportional to their contribution of land. Table 9 presents the return value to each property owner as a percent of the contributed land.

Table 9: Return Value to the Property Owners as percent of Contributed Land

Map ID	Block	Lot	Owner	Percent of Total Land	Market Value of Land	Return Value as Percent of Contributed Land	
21510-1	21510	1	846 Garfield Avenue, LLC	5.3%	\$143,040,000	\$7,600,000	
21510-2	21510	2	Jersey City Redevelopment Agency	26.1%		\$37,330,000	
21510-3	21510	3	Halladay St Corp	18.3%		\$26,180,000	
21510-4	21510	4	PPG Industries, Inc.	10.0%		\$14,260,000	
21510-5	21510	5	PPG Industries, Inc.	5.9%		\$8,460,000	
21510-7	21510	7	Michael, John	1.8%		\$2,520,000	
21510-10	21510	10	Pace, Clement	2.0%		\$2,800,000	
21510-11	21510	11	Fishbein Family Partnership	2.1%		\$3,050,000	
21510-39	21510	39	Mid-Newark L.P.C/O	18.1%		\$25,820,000	
22704-9	22704	9	Senatore, Thomas & Charles	9.8%		\$13,950,000	
22704-8	22704	8	Senatore, Thomas & Charles	0.3%		\$440,000	
22704-7	22704	7	Senatore, Thomas & Charles	0.4%		\$610,000	
Study Area Total:				100.0%			\$143,020,000

As with any real estate holding company, the property owners would be free to hold on to their shares through the development and lease-out of the building and even benefit from reversion (sale) of the building. The property owners could also choose to sell their shares at any time, for whatever value the

market would provide. The ability to sell shares, and perhaps provide the other property owners the right of first refusal may be part of the agreement that forms the holding company.

The calculation of the return in Table assumes an undifferentiated land contribution. This means that all land is valued equally as an input to the land pool. Some property owners may believe that because of existing uses or prior zoning their property is worth more than that of other property owners. The property owners may want to negotiate this basic condition of the joint-venture economics prior to establishing the deal.

Annex 2:
Rules for Participation by Property Owners and Business Occupants

In California, the Community Redevelopment Law (California Health & Safety Code Sections 33000, et seq.) governs local government involvement with redevelopment. The Community Redevelopment Law (CRL) was enacted in 1945 and has been amended regularly since 1951, with major changes made in 1978, 1994, and most recently in 2006. California first enacted rules in 1963 governing owner participation in redevelopment and the preferences for persons engaged in business to reenter the redevelopment project area.¹⁷ Several sections of the CRL handle owner participation issues. These sections, including 33339, 33339.5, 33340, 33445, 33380, 33381 and 33394, require redevelopment authorities to do the following for each redevelopment plan:

- Adopt rules to provide for participation by the property owners in the redevelopment of property in the project area in conformity with the redevelopment plan;
- Extend reasonable preference to persons who are engaged in business in the project area to reenter in business within the redeveloped area if they otherwise meet the requirements prescribed by the redevelopment plan; and
- Develop alternative provisions for redevelopment of the property in the redevelopment plan if the owners fail to participate in the redevelopment as agreed.

Since the enactment of this law, all of the redevelopment authorities in California have adopted a uniform set of regulations commonly known as “Rules Governing Participation by Property Owners and Preferences For Business Occupants to Re-Enter in Business Within the [...] Redevelopment Area” (hereinafter referred to as the “Rules”). The Rules are adapted and adopted for each redevelopment project.

The Rules have sections that generally address the following provisions:

1. **Compliance with Law.** The Rules guarantee the rights extended to property owner’s and business occupants under the CRL, including the right to participate in redevelopment of the area if the owners and business occupants agree to participate in the redevelopment in conformity with the redevelopment plan and the Rules.
2. **Methods of Participation.** Property owners may participate in several methods including retaining all or a portion of their land or adding to their land by purchasing adjoining property; joining with another entity for the rehabilitation or development of the property; or submitting to the redevelopment authority for consideration another method of participation. Participation methods also could include the redevelopment authority buying land and improvements at fair market value from owners or offering opportunities for owners to rehabilitate or develop property jointly with other persons or entities.
3. **Limitations on Participation.** The opportunities for property owners and business occupants to participate in the redevelopment are limited in ways imposed by the redevelopment plan or other existing land use regulation.

4. **Conflict Resolution.** The redevelopment authority must define how it will resolve conflicts that might develop between competing proposals developed by owners for particular sites or land uses.
5. **Procedures for Participation.** For owner's and business occupants to participate several conditions must be met, including the use of a "Statement of Interest" form for property owners and business occupants to initiate the negotiation with the authority for their participation (examples of these forms are typically included as attachments to the Rules). Owners wishing to participate in redevelopment may be required, as a condition to participation, to enter into an Owner Participation Agreement (OPA) with the redevelopment authority. The OPA is a binding agreement between a property owner and the redevelopment authority, required as a condition to participation in redevelopment, by which the participant agrees to rehabilitate, develop, use and maintain the property in conformance with the redevelopment plan and to be subject to its provisions.
6. **Conforming Properties.** These rules govern conforming properties that owners will not necessarily rehabilitate or change current usage.
7. **Enforcement.** As indicated in the CRL, the Rules must include provisions in the event a property owner does not acquire, develop, rehabilitate, or use a property in conformance with the redevelopment plan. These provisions may include authorization for the redevelopment authority to purchase the property or any interest in the property sufficient to obtain conformance, or take any other appropriate action sufficient to obtain conformance including the use of eminent domain, if applicable.
8. **Public Comment and Amendment.** The Rules must establish procedures for the redevelopment authority to hear and act on grievances expressed by property owners or business occupants and be able to amend the Rules to address such problems as appropriate.

Few court cases have reviewed the owner participation provisions of the CRL. The decisions generally support redevelopment agencies' decisions regarding owner participation concerns.¹⁸

- In re: Redevelopment Plan for Bunker Hill 61 Ca1.2d 21 (1964), the California Supreme Court upheld the Los Angeles Community Redevelopment Agency's owner participation rules for the Bunker Hill project. The rules included specific requirements for parcel assembly and financial responsibility, which practically excluded many property owners from participation in the redevelopment. However, the court found that the Agency's parcel assembly and financial responsibility standards were reasonable redevelopment criteria.
- In Huntington Park Redevelopment Agency v. Duncan, 142 Ca1.App.3d 17 (1983), the agency requested proposals from two owners for integrated development of the adjoining parcels. Both owners submitted proposals to the agency. Based on the virtues of each proposal, the agency selected one proposal and condemned the other property. The California Court of Appeal upheld the agency's determination to select one owner proposal over the other.

- In *Redevelopment Agency of Huntington Park v. Slauson*, 173 Cal.App.3d 1121 (1985), the appeals court held that the redevelopment agency could not condemn the Slauson property because the agency did not afford the owner an opportunity to participate in redevelopment. The court found that the agency ignored its own policies, which ostensibly made that opportunity available. Every agency must pay careful attention to its own owner participation rules and policies. The law is clear that an agency must follow the plan that it adopts regarding owner participation rules and rights. If the agency ignores its own rules, the court may overrule the agency's decision.

Annex 3:
Transfer of Development Rights Programs at the Canal Crossing Redevelopment Area

Introduction

The Jersey City Redevelopment Agency (JCRA) seeks to establish a mechanism by which there can be an equitable distribution of the benefits of redevelopment to all existing property owners in the Canal Crossing redevelopment area. In this manner, property owners in locations where new zoning restrictions permit less density can benefit as much as those in locations where the zoning encourages higher density development.

This mechanism could take the form of an equitable *granting* or distribution by Jersey City of development rights to all property owners in the redevelopment zone. The granting of development rights and the use of a “development rights market” to buy and sell these rights can be an instrument to achieve planning goals through a market-based approach rather than through the regulative planning tools of condemnation and expropriation.

These development rights markets operate on the principal that the right to develop property is separable from the basic collection of rights enjoyed by property owners and then transferred to some other property or even to some other portion of the same property. The development right is independent of property ownership. The market then determines the valuation of these rights based on the economic benefits of the development that these rights would allow. The transfer of development rights (TDR) thereby becomes a means to utilize market forces to manage urban plans and realize goals such as an equal sharing of the benefits of urban renewal in order to achieve objectives of equity and distributive justice.

Transfer of Development Rights Programs:
Compensation vs. Equalization

A TDR program is one in which the rules for creating development rights markets within a specified jurisdiction is defined by state statute or local ordinance. Therefore, a public entity (hereinafter referred to as “Authority”) can choose to establish TDR programs to accomplish specific goals.

In the United States, the principal use of development rights markets and TDR programs has been to preserve natural and cultural resources by compensating property owners for losses incurred when their property has been restricted from dense development through a planning decision. This type of program can encourage the voluntary conservation of environmentally sensitive land by compensating the property owner for the potential gain had the property been sold for development

A typical example of a TDR program designed to provide compensation is one used to preserve farmland at the edge of an urban area. In this scenario a development rights market is created when the government establishes a supply of development rights by granting them to owners of farmland located in areas to be preserved. These lands are the “sending” areas. Demand for development rights are likewise created by requiring the purchase of these development rights by developers who wish to build in urban centers where the development is desired. These lands are the “receiving” areas. The TDR program must also address issues such as the allocation of the development rights in a way that the property owners and

developers perceive as fair. Market forces will ultimately determine the actual price of the development rights as developers bid for them.

Agencies may also use TDR programs to provide for “equalization” or achieving an equal distribution among property owners of the advantages and disadvantages that come from urban redevelopment. Although authorities in the United States have not commonly deployed these methods, there are several active programs in Italy and the Netherlands that utilize this concept for urban redevelopment and renewal of abandoned or underutilized land, including lands contaminated by prior industrial use. The method, though it has several different variations depending on the locality of its use, has three basic elements:

First, an authority specifies a redevelopment area for the allocation of development rights. Only those properties to be included in the redevelopment plan are allotted development rights.

Second, all development rights for the properties within the area are assigned a relative redevelopment value or “building index” based on a system of land classification that takes into account legal, physical and economic conditions of each parcel. The authority makes this classification irrespective of the redevelopment plan and the designated zoning for future development of the parcel. The classification takes into account only the current zoning rights and economic value determined as a function of the effective use of the property that reflects either its actual and potential use under the prior plan. Land value is primarily a function of the building capacity it has been attributed. Therefore, the attribution of the indexes represents a crucial step in the process.

[To classify each property correctly, technicians and administrators must have elaborated criteria and methodologies to achieve land classifications capable of guaranteeing equitable treatment of property. For example, the administration of one municipality in Italy broke down the redevelopment areas into five classes: high environmental value areas; development areas; development areas already designated for urban use in the previous municipal plan; urban renewal areas; high-density urban renewal areas. The method used to determine the building indexes referenced the project that the municipal administration intended to promote for the city through the redevelopment plan. The characteristics of the different areas of redevelopment compared with the design led to the attribution of different building capacities or indexes.]

Third, the authority subdivides into sections every class of urban land designated by the plan. Inside these subdivisions, the property owners can negotiate the transfer of the development rights they own. The owners of properties designated for municipal facilities and public infrastructure own rights that the property owners can only use in those areas of the plan designated for dense development. The owners of these latter areas use their own development rights and ‘host’ the rights of the other property owners. Joint ventures may be formed with developers whereby property owners can contribute their properties and/or development rights to a real estate development project in which they retain a stake (and take on risk) to share in some of the economic benefits of the redevelopment project.

One additional benefit to this plan is that the authority may use the new development to fund the acquisition of the land designated for public use. Once the property owners use the development rights, the property owners of the areas designated to public facilities relinquish their properties to the local authority at assessed pre-plan market prices or for nothing at all. At this point, the local authority uses public funds to complete the public infrastructure development.

In this way, the equalization mechanism functions as an equal allocation and distribution of development rights and burdens among the property owners. Therefore, the principles that make up the rationale of such a planning tool are those of equity and distributive justice among property owners.

Established TDR Programs in New Jersey

Since the early 1980s New Jersey has utilized TDR programs to accomplish “Smart Growth” goals related to the preservation of sensitive land and to control urban sprawl. These efforts culminated in the 2004 passage of the New Jersey State Transfer of Development Rights Act and the establishment of the State Transfer of Development Rights Bank is to support development potential transfers in municipalities that have adopted development transfer ordinances. These efforts include the following:

New Jersey Pinelands Development Credit Program (1981)

- Example of a successful regional approach to TDR. Has preserved over 50,000 acres.
- Established to offset the severe development restrictions imposed on certain designated districts and areas.
- Restricted property owners receive development credits by a formula based on current land usage. These credits may be sold to developers in “receiving” zones to build at densities above the base density.
- Municipalities may not give away density through variances.

Burlington County TDR Demonstration Act (1989)

- Pilot project for the State in the creation and implementation of TDR programs. The Legislature chose Burlington County because of its strong agricultural base.
- Chesterfield and Lumberton Townships implementing voluntary comprehensive municipal TDR program including transfer of development rights from areas planned for agriculture and open space to a new, planned, traditional-neighborhood communities. By allowing property owners in planned preservation areas to sell their development rights to developers who can use them in the village centers, new growth pays for the protection of farmland and open space.
- TDR credits are allocated to a sending area parcel based on the parcel’s suitability for septic. This basis is used because it is seen as the most reliable measure of a parcel’s actual development potential.

New Jersey State Transfer of Development Rights Act (2004)

- Established State Transfer of Development Rights Bank is to support development potential transfers in municipalities that have adopted development transfer ordinances. In New Jersey, municipalities that have established development transfer ordinances may use the State TDR Bank, establish their own transfer of development rights bank or use a county managed bank, if available, to facilitate transfers within their jurisdiction.
- Major tasks of the State TDR Bank include:
 - The purchase, or provision of matching grants for the purchase, of 80 percent of the value of development potential from properties within designated TDR sending areas;

- The provision of a financial guarantee with respect to any loan secured using development potential as collateral;
- The provision of planning assistance grants to municipalities to help cover the cost of preparing the planning documents required to enact viable TDR ordinances;
- Service as a development transfer bank for any municipality that has adopted a development transfer ordinance, or any county in which at least one municipality has adopted a development transfer ordinance; and
- The establishment and maintenance of a Development Potential Transfer Registry to record all development potential transfers.

The Jersey City Division of Planning received a planning grant from the NJ Office of Smart Growth to conduct a comprehensive planning study to compose a TDR Ordinance for Jersey City. This on-going project has already selected three project areas as the pilot zones for this program.

Endnotes

¹ The term “voluntary exchange” refers to the sale of a property by a willing seller to a willing buyer for an agreed upon price. Eminent domain, also referred to as condemnation, is a power conferred on units of government which can be used to force private property owners to sell their property (or a part of the property) for fair market value, provided the property is needed for a public purpose. With eminent domain, the incremental value increase accrues strictly to the taking authority since the authority is required only to pay current fair market value, which will not incorporate the increased final value of the redeveloped property. With voluntary exchange, the developer is usually in a better situation to capture the increase in value since the developer often has the benefit of knowledge and expertise unavailable to the typical property owner.

² A very thorough history of the use of land readjustment internationally is presented in: William A. Doebele. Foreword to *Analyzing Land Readjustment: Economics, Law and Collective Action*, Edited by Yu-Hung Hong and Barrie Needham, Cambridge, Mass.: Lincoln Institute for Land Policy, 2007. For other examples of the international use of land readjustment policies see: Robert Home. *Land Readjustment as a Method of Development Land Assembly: A Comparative Overview*. The Town Planning Review, Vol. 78, No. 4 2007, pp. 459-483; Gerhard Larsson. *Land Readjustment: A Tool for Urban Development*. Habitat International. Vol. 21, No. 2, 1997, pp. 141-152.

³ This example was cited in a brief presented to the US Supreme Court in *Kelo v. The City of New London*. The brief includes historic citations and details of the transactions. See: *Brief for John Norquist et al. as Amicus Curiae Supporting Petitioners*, at 17, *Susette Kelo et al. v. City of New London*, 125 S.Ct. 2555 (2005) (No. 04-1085).

⁴ Elements of this framework have been adapted from the following sources: Melissa Schrock. *The Potential Use of Land Readjustment as an Urban Redevelopment Strategy in the United States: Assessing Net Economic Value*. Master’s Thesis. Massachusetts Institute of Technology. 2012; Yu-Hung Hong. *Assembling Land for Urban Development*. pp. 3-34 in: *Analyzing Land Readjustment: Economics, Law and Collective Action*, Edited by Yu-Hung Hong and Barrie Needham, Cambridge, Mass.: Lincoln Institute for Land Policy, 2007.

⁵ However, if enabling legislation compels non-cooperating property owners to sell their property to the planning agency, then public funds must be used in this case, as in the case for the eminent domain.

⁶ Yu-Hung Hong (2007).

⁷ Rachelle Alterman. *Much More Than Land Assembly: Land Readjustment for the Supply of Urban Public Services*. pp. 57-86 in: *Analyzing Land Readjustment: Economics, Law and Collective Action*, Edited by Yu-Hung Hong and Barrie Needham, Cambridge, Mass.: Lincoln Institute for Land Policy, 2007.

⁸ See: Frank Schnidman. *Alternatives to Eminent Domain*. American Planning Association: Planning & Environmental Law. Vol. 57, No. 91 p.15. September 2005

⁹ A proposal for a land readjustment statute for the US is provided in: George W. Liebmann. *Land Readjustment for America: A Proposal for a Statute*. Lincoln Institute of Land Policy, 1998

¹⁰ For an example in the City of Cape Coral, FL and a discussion of the potential use of land readjustment in this situation see: *Study on Pre-Platted Land Strategies in Cape Coral*. Prepared by Evalueserve, Inc. for the City of Cape Coral. July 2008.

¹¹ William A. Doebele. Foreword in: *Analyzing Land Readjustment: Economics, Law and Collective Action*, Edited by Yu-Hung Hong and Barrie Needham, Cambridge, Mass.: Lincoln Institute for Land Policy, 2007.

¹² Lynne B. Sagalyn. *Land Assembly, Land Readjustment and Public Private Redevelopment*. Lincoln Institute for Land Policy (Working Paper). March 2002.

¹³ A legal opinion on the use of TDR in New Jersey and at the Canal Crossing Redevelopment Area was provided to JCRA by McManimon & Scotland, L.L.C. Attorneys At Law.

¹⁴ Geltner, David, and Norman G. Miller. *Commercial Real Estate Analysis and Investments*. Ch. 10 (p. 211-239). Mason, OH: South-Western, Thomson Learning, 2004

¹⁵ "Jersey City, NJ Market Trends." *LoopNet - Commercial Real Estate On-Line*. Accessed on: Web. 11 Aug. 2013. <http://www.loopnet.com/Jersey-City_New-Jersey_Market-Trends>.

Median square foot sale price listed for multifamily residential units was derived using the median sale price of multifamily residential units (\$210,000) divided by the average square footage of unit (900 s.f.). This results in an annual lease rate of \$23/s.f. at a 10% cap rate

¹⁶ "CBRE Cap Rate Survey: February 2013." Capital Markets: CBRE. Accessed on: Web. 11 Aug. 2013. <<http://www.cbre.com/AssetLibrary/Cap%20Rate%20Survey%20Feb%202013.pdf>>

¹⁷ The State of Nevada has also adopted similar laws see Nevada State Code: Title 22 Chapter 279: "Redevelopment of Communities"

¹⁸ These case summaries were published by the Fukuda Law Firm of San Francisco, CA in their blog on California Redevelopment Law. Retrieved from: http://www.fukudalaw.com/redevelopment_law.html