

Boycott that BRA magic

Wednesday Jun 10, 2009

The skill of a good magician is to set the trick in motion before the audience arrives, and distract the viewers with unrelated activities while it appears to be happening before their eyes.

The Boston Redevelopment Authority (BRA) runs a great magic show. It conjures out of thin air approvals of projects not even faintly resembling the zoning laws, all before the neighborhood audience is even notified that the show's in town. We've seen the performance. Thick proposal documents are presented, residents sit through meetings about "impacts studies," special advisory groups are appointed to represent the "community voice," there are detailed comment letters and impassioned testimony. Then, shazzam!-a tower pops out of a tiny site! The audience is amazed! Wait-didn't we all say NO? How could they do that? And look at the zoning code-isn't this ... illegal?

More amazing, the audience members keep returning, project after project, year after year, and are astounded every time the act ends the same way. How can the BRA get away with this?

Well, the heart of the trick is actually the audience participation. We let them get away with it, not by agreeing, but by just being there.

Developers want to build tall; that's where the big money is. The BRA doesn't want to do a legitimate rezoning of the city at the heights it plans to allow, in part because they fear (possibly wrongly!) that the public wouldn't accept them - but more important, because that would let developers build by-right, vastly diminishing the political power of the mayor and the BRA to direct development. And asking the Zoning Board of Appeal (ZBA) for a variance is risky. A denial will stop or diminish the project, and a ZBA approval that doesn't qualify under the legal "hardship" criterion can be challenged in court; most huge projects won't qualify.

So the BRA has created an assortment of regulatory wands to wave, to tailor the code to the project. But-how can it do that legally? Isn't that "spot zoning?"

Not if it's called "planning."

Zoning is a codification of local planning. Even site-specific zoning can be considered legitimate if it is shown to be consistent with the city's plans. And the planning agency-here, the BRA, since it grabbed up the planning board in 1960-gets to say what is the plan.

The BRA can write into the zoning code (it staffs and advises the puppet Zoning Commission, which nominally approves the code) site-specific loopholes for almost every occasion (Planned Development Area, Chapter 121A, U-District, Institutional Master Plan, etc.), and, if that's not enough, it simply amends the zoning to match the project. Then it can declare this custom zoning to be consistent, as the code itself requires, with its "general plan for the city as a whole" (which doesn't exist) or bits thereof. Think "Alice in Wonderland": planning means what the BRA says it means.

The courts, as the judicial branch, avoid interfering with legislative functions, including planning and zoning law-making. So when the BRA wraps its customized zoning within its mantle of planning, it protects the developer, the City and itself-by depriving the public of legal recourse. Legal means what the BRA says it means.

And - here's where the magic happens - the public process, our audience participation, constitutes the "planning" needed to legitimize the tailored zoning. Can we have a volunteer up on the stage? Yes, many, and, of course, the more egregious the proposed zoning violation, the more active the audience participation. Bogus as it is, it's banked for future use, should anyone try a court challenge. There, on the record, are enough studies, public meetings, and comment letters to prove that there has indeed been "planning," and the resulting rezoning is not arbitrary and capricious.

So all of us who participate in these project reviews, who attend meetings and submit comments, are enablers of the BRA's hocus pocus. We consent to being distracted by its made-up review requirement, and thus we legitimize the outcome. Without the "community planning process," and the "public benefits" that the BRA decides will outweigh the burdens of the project, the BRA's zoning finagles would stand starkly exposed as "spot zoning," and often also "contract zoning," i.e., zoning sold in trade for public goods and services (also unlawful).

We should boycott. We need a citizens' strike. If we want the rule of law, with the protections that brings, we should not let ourselves be used as participants, but be active as protesters. Carry signs at meetings. Submit letters saying simply that this is not legitimate planning and zoning, and declare this so-called community process null and void. (Do, however, write substantive comments to state agencies if they have jurisdiction.)

Reach out to other neighborhood groups and stick together. Don't let the developer or BRA meet with sub-groups or individual representatives, to divide and conquer; they will dub the first to be co-opted as the "community voice." Don't accept those flattering appointments to IAGs (Impact Advisory Group) and CACs (Citizen or Civic Advisory Group) and other bogus community advisory groups, and don't accept their recommendations and reports as meaningful. Don't let the developer or BRA dangle benefits of any kind before you; they are a ruse. Don't let the mayor send you off to negotiate for public services-schools, parks, libraries, etc.-from developers; public services are not their job, but his, and we can easily afford them if we don't squander our money.

The tower projects now on the table would be among the tallest in the city: Government Center Garage, Harbor Garage, Simon Copley Mall, Christian Science Center, North Station, the thousand-foot (or whatever the Federal Aviation Administration will allow) Winthrop Square tower, all wildly beyond the zoning. Yet, we keep trooping into the theater, peering intently at shadow studies, lamenting the traffic projections, writing out our benefits wish-lists. We have been hypnotized.

Wake up. Stop wasting your time at the BRA's magic show. Stand up and say, "This violates our zoning laws, and you don't qualify for a variance. Come back when you have a project that respects the law."

Don't be distracted by irrelevant "process" while your hard-won zoning protections disappear and elephantine towers pop up out of nowhere. Let's picket the theater, and replace the hocus-pocus with planning that's real.

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The BRA: end it, don't mend it

Wednesday May 13, 2009

The Boston Redevelopment Authority (BRA) is planning its 50th birthday celebration. Boston has endured over a half century of neighborhood destruction, lawless development and financial assaults by this quasi-public agency, an "independent" urban renewal authority that, long after urban renewal has been discredited as a city-building strategy, has extended its fingers into almost every aspect of Boston's governance.

But because it has such ubiquitous powers, most citizens, the media, and even public officials don't realize that the BRA is not an integral or necessary part of the city's government; knowing nothing different, they think it can't be eliminated. We often hear politicians promise to reform the BRA, to make it more responsive to the community, or more accountable. This is illusory; it is structured as an authority precisely for the purpose of avoiding accountability, and its core mission will always be to promote development. It cannot be transformed. It must be structurally dismantled.

How do we do it? And what should replace it?

The BRA has three general roles: urban renewal, planning/zoning, and community service programs. Each must be terminated and these critical functions must be brought under accountable city control, on the city budget and subject to public oversight.

Urban Renewal:

The BRA was created under a state enabling law (Chapter 121B) by a city council vote in 1957. It was to create and implement 40-year Urban Renewal Plans as approved by the council, to stimulate the city's depressed post-war economy by replacing "blighted" (read: poor) neighborhoods with middle-class housing (and residents). The BRA also has the power to qualify development projects for city property tax exemption through Chapter 121A, a program created to subsidize affordable housing in blighted areas. Over time, the BRA has elbowed the council out of its oversight roles under both statutes through legislation that exempts Boston from provisions that apply to other cities.

Today, the councilors do not seem to understand how the BRA works, nor do they realize that it was supposed to be fully accountable to them. In its 3,300 acres of urban renewal land, occupying much of the central city area, the BRA controls land use and has eminent domain power; and it can create site-specific urban renewal areas with so-called "demonstration projects," without council approval. It also exacts perpetual transfer taxes from subsequent owners of properties it sells to developers. In 2004, the BRA, negotiating with the council in unlawful secret meetings, herded the councilors into voting to give up most of their remaining powers over the BRA's urban renewal activities and to perpetuate the urban renewal plans, from which it draws its basic power and legitimacy. But certain reporting requirements were set as a condition of the vote, including annual reports on the BRA's urban renewal planning and land disposition activities, and from personal interaction with City Councilors I believe the BRA has failed to meet them, denying the council the stipulated tools for accountability.

The council should rescind its 2004 vote and either let the Plans expire over the next few years or vote to terminate them.

City Planning:

The BRA was never meant to be the city's planning board. Indeed, no other urban renewal authority in the U.S. became its city's planning agency. It is a conflict of interest, since the authority is a development interest and should be seeking approvals from the planning board and city council. Yet, in 1960, legislation (Chapter 652 of the Acts of 1960) was passed abolishing the Boston planning board and giving all its powers and properties to the BRA; this was to assure that planning would not get in the way of the BRA's redevelopment agenda, and indeed, it never has. Thus, instead of a disinterested, professional planning and zoning operation accountable to an elected legislative body as provided under our state laws, Boston has a quasi-public redevelopment authority at its helm. Instead of taking, clearing and selling land to private developers as intended, the BRA has amassed a huge land empire of its own, in and beyond urban renewal areas (notably, the seaport industrial area), becoming one of the largest land-owners in Boston.

As the planning body, and the staff and legal adviser to the Boston Zoning Commission, the BRA can plan and zone its own land to maximize its lease or sale profits. And it can manipulate the zoning process to enable private developers to escape the zoning laws, protected from legal challenge. Boston mayors have been empowered by this legal shield to effectively re-zone the city site-by-site for developers they favor, who in turn fill their campaign coffers. Since the BRA's core mission is to promote development projects, particularly large and very profitable development for desirable demographic groups, we have no comprehensive, proactive, long-range city planning. The city council and mayor should file a home rule petition (Boston-specific state legislation) repealing the relevant section of the 1960 law, and reestablish a city planning board, under the oversight of the elected legislative body, the city council. Mass. state laws (Ch. 40A and 41) lay out provisions for planning and zoning agencies in cities.

City service programs:

The BRA has taken over the implementation of many city programs related to jobs, literacy, youth, etc. Some state and federal grants for these services, which should be run by the city directly, run through the BRA. This grip on the purse strings of much-needed public services also adds to the BRA's political power.

These programs, and their funding, should be put back into the hands of accountable city departments.

When the BRA is dissolved, its billions of dollars' worth of real estate, (some of which it took, with mayoral permission, from the City of Boston without paying compensation), should be taken into city ownership, and either dedicated as necessary for public use, or surplus by the city council and returned, through competitive bids, into the private market for productive development conforming with genuine city plans and zoning laws. The council should obtain a list and map of BRA-owned property, and get accurate appraisals.

The council should hold extensive public hearings to receive community input on the structure of the planning board, and it should consult legal and planning advisors as necessary to write the by-laws for the planning agency. A new or modified zoning agency may be deemed desirable as well; for this another legislative change may be necessary with regard to the Boston Zoning Enabling Act (Chapter 665 of the Acts of 1956 sets up our Zoning Commission). Boston has been excepted from other state laws affecting planning, zoning and eminent domain; these will require modification as well.

The city charter should be reviewed and revised as necessary to support these changes, and to further improve the checks and balances between the council and the mayor.

The elimination of the BRA and reestablishment of a planning board, funded and operated as a part of publicly accountable city government, is not revolutionary but simply a restoration of normal order. Election season is the time to get it done.

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Living in "The Matrix" of the BRA

Wednesday Mar 4, 2009

It's so hard to describe the Boston Redevelopment Authority (BRA), because there is nothing like it in all of America. Nowhere else has a quasi-private urban renewal authority been given the municipality's powers of planning, zoning and project approval; it's effectively outsourcing your brain. In other cities with urban renewal authorities (not every city has one), the agency proposes specific projects in Urban Renewal Plan areas and seeks City Council approval. Here, City Councilors line up at BRA hearings to testify, express gratitude, and beg (oh, please, a little more affordable housing!).

I usually call the BRA "an imperial power of which Boston is the sole colony." But recently I found a better analogy. In the sci-fi movie, "The Matrix," humans create machinery that eventually takes them over. It programs them to see only an artificial, rosy world while their actual world decays, letting them think they are really making their own decisions for their lives in order to keep them docile while it steals their energy and resources (and wrecks their nice historic buildings).

That's what the BRA does, keeping us plodding along in a simulated world of rules and procedures, thinking we are "participating" and "commenting" and contributing "input" on our city's development while our energy is sapped and our real environment is transformed beyond recognition.

The "public process" surrounding the Prudential Center provides a stark illustration.

The BRA, created in 1957 to capture federal money for urban renewal (bad enough!), also grabbed up our planning board in 1960. It was done via a provision tucked into legislation giving the Prudential Insurance Company a 40-year tax exemption under Chapter 121A (meant to subsidize affordable housing in poor neighborhoods). The provision abolished the planning board and gave all its powers and properties to the BRA, elbowing the legislative body, the City Council, out of the way. The purpose was to preempt planning, to be sure real planning didn't get in the way of redevelopment. Indeed, for over a half century, it hasn't. And although

urban renewal was intended as a temporary program to jump-start the post-war economy with 40-year plans, the BRA's tentacles now curl around every important financial and regulatory activity in the city-with no public accountability.

Above all, the BRA has eliminated citizens' rights in city planning and development. Under an elected City Council, zoning is a legislative act, and the courts rightly avoid intervening, leaving the remedy to the voting booth. Planning and zoning normally have this built-in political accountability. But in Boston, zoning is not a legislative act; it's an executive operation, under the mayor and his appointed Zoning Commission, a puppet body stacked with real estate interests, staffed and advised by the BRA. We lost the legislative level of accountability, but the courts still defer to zoning decisions as political actions.

The constitutionality of this power shift was questioned by the legislature, and astoundingly, it was upheld by the state Supreme Judicial Court, on the grounds that different communities can be justifiably allowed by the state to structure their governance differently. The equal protection clause of the Fourteenth Amendment does not, the Court opined, prevent reasonable classification of subjects of legislation, nor preclude legislative action providing treatment of problems differently in different communities, in a manner having a reasonable relationship to the objects of the legislation. Different treatment is justified if the conditions in these communities differ sufficiently so as fairly to give rise to the legislative belief that such different treatment is desirable in the public interest, and if the legislation operates equally within each geographical area with respect to persons similarly situated.

Of course, the similarity of persons' situations is rather subjective, but, circularly, the BRA gets to decide this within the city. So, here we are. For fifty years, Boston, the cradle of democracy, has been teetering on one (the executive) of the three legs of the stool of democratic government, with severely curtailed checks and balances from the legislative and judicial branches in shaping the city's growth and development.

At the Prudential, changes in the zoning code, tailored to the developer's proposals, have been approved by the BRA and the Zoning Commission. This is clearly a violation of the Zoning Enabling Act, which gives the power of zoning relief only to the Board of Appeal (a law-enforcement, not law-making, process that formally provides judicial recourse for aggrieved parties). It is spot zoning, which is illegal. Under the Act, the courts may "annul such action [zoning decision] if found to exceed the authority of such commission..." Yet, among several attorneys consulted, none would take the case. Some feared political retribution for challenging the BRA's zoning-relief-by-zoning powers, but others-even more troublingly-concluded that, although the text of the law might support a suit, the practice of the courts in deferring to local planning and zoning (even project-tailored zoning, which the planning board can simply declare consistent with the city plan) makes success very unlikely.

This power to shield spot zoning from legal recourse is exactly why the BRA took over our planning board. This is why we must take it back.

Occasionally, I hear community folks rejoicing that they won on a development dispute; others hope to learn how they too can prevail in their protests. But it's more likely that there was another reason for the change in developer's plans, one that suited the BRA financially, or the mayor politically.

It's naive to think that community resistance works if it's sufficiently loud and prolonged. And even if it occasionally does, the David-and-Goliath method of deciding how the city develops is not a path to a coherent city vision. For that, we need the rule of law. It sounds simple. It's the underpinnings of the democracy we fight and die to "give" to other countries. Yet, we apparently don't believe in it here. Or don't practice it, anyway. Maybe politicians, and even some residents, think they'll do better if every project is a negotiation, and they can grab a few crumbs in the "community benefits" bazaar. It's another illusion.

Community people make mistakes; they often disagree; they don't always have the facts; they may be parochial at times. But decision-making should be transparent, part of accountable democratic government. If we don't want to be "The Matrix," if we want to know what's really happening and what we're really doing, if we don't want to find out one day that we've been laboring in a faux "reality" while Boston has been taken out from under us, let's eliminate the rule of BRA and restore the rule of law. Election season is the time.

An RX for city's finances? Follow the BRA

Wednesday Jul 2, 2008

City Council has finished another budget review, an exercise in which, unfortunately, few councilors and even fewer citizens participate. And now that it's all over, we still know little about the outlay of our \$2 billion budget.

Although it is not the biggest budget item, one of the biggest factors in the city's overall revenue picture is the Boston Redevelopment Authority. This year's BRA hearing was scheduled for a very short time slot, not nearly enough to probe all the BRA's many financial impacts. It was adjourned without opportunity for the public (in this case, only myself, perhaps because no public notice was posted for the hearing) to testify. Hopefully, the councilors will schedule a second hearing with appropriate public notice, inviting in the many people who may have comments to make about the BRA.

Here are some of the BRA-related financial questions that I think need to be examined - and unfortunately weren't this budget season:

The BRA has, in its 50 years, drained untallied billions of dollars from the economy of Boston, and continues to do so with mayoral blessing. It gets millions a year in city capital funds directly, and takes many more millions from us indirectly. The BRA claims to be "self-funding," serving the city of Boston without cost; At-Large Councilor Michael Flaherty insists we must preserve the BRA because "we can't afford a Planning Department." But the BRA has always been publicly funded, by federal money from its creation in 1957 to the mid-1970's, and since then by city money, directly or indirectly (and without Council review).

The BRA testified that it sustains itself on land sales and leases, and on what Director John Palmieri called "kickers" from various projects. Where did the BRA get all that land? And what are these "kickers"?

The BRA began by seizing "blighted" land, for which the federal taxpayers paid compensation. Now, the BRA takes private property using city money. A few notable examples: in Chinatown, the China Trade building; and the Glass Slipper adult entertainment club, which the city gave the BRA \$2.3 million to seize for the benefit of a developer (the BRA received reimbursement from the developer and was to reimburse the city, but the BRA has not responded to my request for the record of the payment to the city).

More problematic, it takes city-owned property and the Mayor waives compensation, bleeding our capital fund. Examples: City Hall Plaza: \$400 million estimated development-site value. Hayward Place: \$23 million bid value. Winthrop Square: city garage lease rights already taken; BRA says parking revenues are up to \$1 million, but city only gets the maintenance bills. BRA will take the development rights next, worth hundreds of millions. Yawkey Way: BRA took lease rights from the City and collects all fees for Red Sox use of street; about \$1 million by now, and growing. The Mayor also sells the BRA city land for token amounts: e.g., 24 parcels of land in Dorchester were "sold" to BRA by the Department of Neighborhood Development for a dollar and resold by the BRA for \$2.4 million. An unknown number of takings and re-sale of city-owned "air rights" under building cornices have contributed to the BRA's coffers. Indeed, the BRA has admitted to taking thousands of city properties. We need a list of them, and their current status.

The BRA collects a 2 percent "fee" on condo sales on land it had owned. Absent a service, this "fee" appears to be a "tax," and thus unconstitutional. How many such units have there been, where, how much have they paid?

The BRA collects fees from developers for proposal kits, etc. What are all these fees, and how much money do they bring in?

The BRA declares sites "blighted" to qualify them for tax breaks (and zoning relief). We should be able to calculate the amount of the public subsidy from legally required true assessments; instead, the BRA helps developers negotiate their preferred tax assessment, so we can't even know what we're losing, although councilors have asked many times. The BRA demands from owners \$1 per square foot for transferring a 121A at sale; e.g., since 2000, the One Beacon St. tower, 1.1 million square foot building, has been sold three times; its owners have escaped about \$5 million in property tax yearly, while BRA got \$1.1 million with each transfer. In just this past 8 years, the BRA gained \$3.3 million while the City lost \$40 million.

"Blight"-based Tax Increment Financing (TIF) tax waivers went to Back Bay and seaport projects, to subsidize luxury condos, four-star European hotels, a glittering office tower, and a deal between landlord (Beal Company) and tenant (JP Morgan).

The BRA gets "anti-speculation fees" when it helps speculators. Thanks to BRA rezoning and a sweetheart deal on City land, developer Henry Kara turned \$2.5 million into \$14 million; the BRA's cut was \$2 million.

The BRA has amassed a huge real estate empire of leased property, by being both developer and regulator. Its property tax-exemption costs us unknown millions a year. Hundreds of acres cleared for "urban renewal" and still vacant have cost us decades of taxes. Why aren't all BRA properties out in the private development market, as originally intended?

The BRA rezones many parcels in the city for tax-exempt institutions, transferring the tax burden of exempted properties to the rest of us. The BRA lobbies the legislature to pass state tax breaks for developers. The BRA piggy-backed its own 5 percent affordable-housing requirement onto the Mayor's Executive Order for a 10 percent set-aside - but developers can buy out at \$200,000 per unit, totaling, so far, over \$10 million. What affordable housing has been built with this money?

The BRA, a self-funding quasi-private authority, occupies the 9th floor of City Hall rent-free. How many square feet of office space does it occupy, and what is a comparable rental rate? Does the BRA occupy other city buildings free of charge? The BRA says it gives the city free use of its own space. Where?

The BRA is an equity partner in several big projects (Rowes Wharf, Charlestown). What zoning relief and public contribution were provided? What are the incomes?

The BRA administers federal and state grants to Boston. How much does the BRA take in fees?

What is the BRA's role in the Economic Development and Industrial Corporation (EDIC), and how much EDIC money is used by the BRA?

In 2004, Council voted to extend the BRA's urban renewal plans, conditional on certain reporting requirements. The BRA has failed to comply. Since the BRA is impeding legally required oversight, the Council should rescind the vote and let the plans terminate as originally intended, ending the BRA's urban renewal powers.

And even this list still doesn't get at all the information we need. Council should have ongoing BRA hearings, with public input, until it understands the BRA's grip on our city's financial health

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The BRA shapes our city without us

Thursday Jul 17, 2008

In my last column, I reviewed some of the ways the Boston Redevelopment Authority takes money from all of us. Now, let's turn to some of the BRA's impacts on development, planning and public policy.

The BRA, created in 1957, used stealth legislation to eliminate our Planning Board in 1960, elbowing the City Council, our legislative branch, out of its rightful role in planning and land use regulation. It has since taken over many other Council roles, depriving us of essential checks and balances.

The BRA uses its planning/zoning role and its urban renewal powers to make what is illegal, legal. The BRA confers enormous wealth on favored developers with its loophole-laden zoning code, shielding them from lawsuits for violating laws meant to protect the community. Politicians can make private deals with developers, drawing campaign contributions that keep them in office. The BRA conducts the "public process" of review and approval and absorbs the helpless wrath of citizens, while the officials remain insulated from public retribution.

The BRA's "four finagles," as I call them, are:

- Planned Development Areas (PDA), projects of an acre or more;

- Chapter 121A agreements granting tax breaks, zoning relief, and eminent domain power, for sites the BRA declares "blighted" (in Boston, City Council is cut out of 121A review);

- U-Districts, within the BRA's 3,000 acres of original Urban Renewal Plan areas and constantly added "Demonstration Project" areas, where the BRA conveys land to a developer; and
- Institutional Master Plans (IMP) of expanding tax-exempt institutions.

In these self-zoning districts, development rules are simply negotiated with the BRA. But such relief is illegal. It violates the Boston Zoning Enabling Act, which gives the power of zoning relief only to the Zoning Board of Appeal, whose process provides legal recourse: aggrieved parties can sue. Thus, the BRA, having disarmed the legislative branch, has also largely deprived us of the judicial branch, leaving the "three-legged stool" of democratic government standing on the executive alone.

No neighborhood is protected from the BRA's magical self-zoning wand, given its liberal criteria - although the BRA routinely violates even these. Even a project with only a half-acre of land has been made a PDA, by counting nearby streets and sidewalks. Abracadabra!

Even when the zoning code included provisions that the BRA's own lawyers warned cannot be changed by a PDA, it used a PDA designation (indeed, the half-acre one) to remove the code protection of the historic Gaiety Theatre and destroyed it for an unlawful tower. Hocus pocus!

Even where the code prohibits PDAs altogether, the BRA simply gets the puppet Zoning Commission to delete the prohibition when it approves a PDA. The tower replacing Filene's in Downtown Crossing was legalized this way. The Columbus Center project was given a PDA, when, as a Turnpike air rights area, it is not even subject to city zoning. The BRA's project manager on the Columbus Center wrote in a memo in 2003 to the several local neighborhood associations: "PDAs are not permitted in the Bay Village Neighborhood District, the Open Space Urban Plaza subdistrict of the South End Neighborhood District, or the portion of the Downtown IPOD that includes the Site. Text Amendment No. [blank], submitted by the BRA for approval immediately prior to approval of the PDA Plan, would make such provisions inapplicable to the Site." Presto!

The BRA granted a 121A to Two Financial Center, a tower proposed in the booming historic Leather District. Residents sued and lost: the BRA, the court said, may declare blight at its discretion. That developer's revised proposal for a still over-sized building stated that if the community opposed a variance, he would take the 121A and not only over-build but take the tax exemption as well. Loew's (now W) Hotel near the Theatre District got a U-District when the BRA seized a few square feet of land near the site and conveyed it to the developer. Shazam!

Coming up: the redevelopment of the Government Center Garage. It's big enough for a PDA, but the BRA owns the adjacent parcel. By adding it to the project, it can make a U-District, become an equity partner, and profit by approving the biggest possible building. A 121A is also possible, and would leave more money in the developer's budget for the BRA's lease fee.

Institutional Master Plans are by used all colleges and health care facilities. With their unfettered expansion, residential buildings become student dorms, neighborhood-serving retail disappears, neighborhoods are destabilized, voting power diminishes, families move out. And the tax burden of their exempted property is shifted to the rest of us.

The BRA owns hundreds of acres of land rights, where it simply writes its own rules, an egregious conflict of interest the Boston Globe editorialized about on April 6, 1999, "On top of South Station?": "The BRA ought to be the watchdog for the project, but it owns the air rights over the station and stands to gain a fortune in lease payments..." It is a profit-seeking - and unfairly advantaged --competitor in the real estate market. It tilts the playing field with cronyism in developer designations (it is exempt from competitive bidding laws), encourages (and engages in) speculation, permits development that hurts our environment and quality of life, causes an artificial land scarcity, and drives up land costs, driving up housing and business costs.

These few examples barely scratch the surface; the BRA's zoning shenanigans could (and should) fill a book.

Meanwhile, for a half-century, we, in the cradle of democracy, have been without a planning entity that cares about anything besides the profits of big developers (including itself). Its social mission remains to remake Boston for better people. Its political mission as an "ethics laundry" remains as well: to do the dirty work while keeping politicians' hands clean.

Accountable only to its own board, dissolvable only by its own hand, and apparently out of reach of the ethics commission or any law enforcement agency, the BRA is "da bums" we can't "t'row out."

City council must stand up to Boston Redevelopment Authority

January, 2005

December 15, 2004 was a happy day for the Boston Redevelopment Authority (BRA). Under intense pressure from the BRA and Mayor Thomas Menino, the Boston City Council voted away its power over the term limits of the BRA's 40-year Urban Renewal Plans (URP), which are set to expire over the course of the next decade.

Now, the BRA is trying to eliminate the last remaining oversight over URP terms: review by the state Department of Housing and Community Development (DHCD). After years of petitioning the DHCD for even short "minor modification" extensions, the BRA is now telling DHCD that it doesn't have jurisdiction because long-term extensions aren't "major modifications." This, of course, contradicts the BRA determination — written right into the order originally submitted to council — that they are indeed major and do require DHCD approval. Boston's urban renewal plans were originally authorized by the city council under the post-war Federal Housing Act of 1949 (also known as the Urban Renewal Act) that aimed to eliminate urban "blight" in cities around the country by funding the taking of land and property via eminent domain. The federal program ended in the 1970s but continues under state oversight. In Boston, we're still living with the bad ideas (the construction of City Hall Plaza to name just one) that came from the dismantling of the West End and Scollay Square. But the true failures of urban renewal plans become obvious when the deals and developers are scrutinized. Much of the land taking occurred in lower-income neighborhoods populated by minorities. Buildings were demolished and the land sold to favored developers for luxury housing and office towers.

To listen to the BRA and its defenders, one would believe that eminent domain takings are a thing of the past. But the BRA has completed more than 200 takings since 1990. In areas designated for urban renewal, the BRA can take land and funnel it to favored developers without public oversight (such as part of the site for the South End BioLab to the Boston University Medical Center, and Hayward Place to Millennium). It can take buildings and evict tenants for the owners (as it tried to do at the Ames Building, 1 Court Street). It can take city property without paying a dime and control all sale or lease arrangements (Hayward Place, and City Hall Plaza — yes, taken again in 1996, this time from the taxpayers). It can eliminate all zoning on a site by adding adjacent land it has taken for the developer and designating the site a "U-District" (Loews Hotel in Park Plaza Area). It can share the profits of development it regulates, becoming an "equity partner" (Rowes Wharf) or take an "anti-speculation fee" after assisting speculation (Back Bay's Piano Row property assembled by Henry Kara, the market value of which went from \$2.5 to \$14 million with the addition of a White Fund parcel the BRA took from the city for Kara and a U-District, yielding a 20 percent cut to the BRA; it is now to be an Emerson dorm. The George White Fund is a public charitable trust bequeathed to the city in 1922; its land and buildings are supposed to be used for city agencies or non-profit organizations. When the parcel was originally taken, it was for a hotel development, not Emerson College.).

It also regulates development on its own land (South Station air rights). Through eminent domain, the BRA has amassed a huge land empire of its own, over 400 parcels on 250 acres, exempt from property tax. When URPs expire, these properties, for which the BRA was meant to be the custodian until they were assigned for redevelopment, should be conveyed to the city, which authorized their taking under the URPs. The city should get the sale or lease proceeds, and get them back on the property tax rolls.

But if the BRA gets its way, these plans will never expire. Last October, Mayor Thomas Menino asked the council to approve a proposal for a decade-long extension of all the URPs. It included language changing the council's powers over URPs, most significantly replacing the council's oversight of "major" modifications with a new power to approve URP changes allowing a density increase of more than 7.5 percent over the potential

square footage of construction in the URP area. District Two City Councilor James Kelly and his Committee on Planning and Economic Development delivered an approving majority (At-Large Councilors Maura Henningan and Felix Arroyo, District Seven Councilor Chuck Turner and District Four Councilor Charles Yancey all opposed the measure), boasting that the council had won more oversight over the BRA. In fact, the council gained no power, and lost what little it had. It's hard to believe that the councilors who voted for this change didn't understand this at the time, but their new "power" is meaningless: URP "potential density" has never been calculated — in fact, it is impossible to calculate. As a result, the council now no longer has any authority over major modifications of URPs — including the extension of such plans, since the extension of a plan is, in and of itself, a major modification.

Why is the continuation of these obsolete, decades-old URPs so important to the BRA and the mayor? Well, Boston's URPs cover about 15 percent of the city, including most of the city's prime areas for development. Control over profits from development and land speculation in these areas brings huge financial benefits to the BRA and political power to the mayor, whom the BRA serves. The BRA (unlike any other renewal agency in the country) is also the city's planning and zoning agency, and combines these powers for even greater control over development. Further, the existence of the URPs also legitimizes the BRA. Without the BRA's original *raison d'être*, people might start to question why we still have an urban renewal authority, and why it's running the city's planning and zoning. So far, the state doesn't seem as willing our city councilors — who acted out of ignorance, complicity, or cowardice — to forego oversight over the URP extensions, rejecting the BRA's self-contradictory argument. But DHCD is a champion of urban renewal, and simply demands individual requests for extending each URP as its term expires, rather than agreeing to an advance blanket extension. DHCD already granted a 60-day extension for five soon-to-expire URPs, to give the BRA time to submit individual requests. They will probably be approved, since local pre-approval is in place.

So what does all of this mean for the West End? Thanks to the council's vote, the Urban Renewal Plan may never expire. So the threat of eminent domain and other urban renewal powers will continue to create uncertainty for property owners and tenants.

The only way we'll be free of this is to elect city councilors who will find a way to re-enfranchise the council and protect us.

The BRA: Conflicting Missions, Power without Accountability

March 8, 2004

For several years, the Boston Redevelopment Authority (BRA) has been fending off growing criticism regarding its role as planning agency for the city. Now a campaign by At-large Councilor Felix Arroyo and others to re-establish a true City planning entity is gathering momentum. The BRA has embarked on a public relations campaign to counter the growing public concern about how it works and what it costs us. In a series of neighborhood "conversations," the BRA is presenting itself as a benevolent, responsive, and all-serving City agency; this is the first time the BRA is going to the community without a specific "plan" or development proposal to promote. In addition, Mark Maloney, Director of the BRA, has published a piece to counter a column Councilor Arroyo is publishing in local papers.

Mr. Maloney claims that the BRA places public involvement at the heart of its processes. The BRA conducts an elaborate "process" of public meetings and written comments for district plans and project reviews, but participants in these activities have learned that they are a sham. Public comments are ignored when development proposals desired by the BRA and/or the Mayor are at stake. The BRA/proponent development team routinely gives misleading information in written documents and public meetings, and has combined its powers as both urban renewal and planning/zoning agency to create a maze of loop-holed regulations that are easily manipulated and abused to "legalize" unlawful proposals.

The BRA actually represents developers, as its *de facto* director of 40 years, Paul McCann, stated at a meeting of the Urban Renewal Plan Extension Task Force (which has been created to perpetuate the UR Plans without the required City Council permission). The BRA's "partnership" is in fact with developers — always as an advocate, and sometimes in actual financial "equity participation" in development profits. Its partnership with

residents is largely in brokering “community benefits” to buy approval for excessive development. The BRA’s “Community Planning” process is conflict-ridden and defrauds the citizens of Boston; but few citizens understand the machinations well enough to know how to protest. And the BRA is virtually immune to legal challenge.

Mr. Maloney tells us that the BRA does Citywide Planning, and that visionary Mayor Tom Menino hired Boston’s “first-ever Chief Planner,” Rebecca Barnes, who now brings us “truly comprehensive planning.” The BRA always had a Planning Director and still does, but it is not Ms. Barnes (whose salary is actually paid by an appropriation from a City Council to which she is not accountable); it is currently Kairos Shen, as the BRA website states. Unfortunately, the estimable Ms. Barnes has disappeared in the BRA’s labyrinth of pseudo-planning and has had no discernable impact, but has become an apologist for the BRA’s euphemism for project-tailored regulation: “dynamic zoning.” Indeed, the last attempt at citywide planning, begun in 1997, was “Boston 400,” an expensive exercise that that wasted much citizen engagement and was officially abandoned last year on Mr. Maloney’s orders, without a single product. In 1960, Ed Logue demanded, as a condition of becoming BRA Director, that the BRA legislatively absorb the Boston Planning Commission, to assure that planning could never get in the way of the BRA’s development agenda; indeed, it never has, and Boston 400 died for the same cause. The “General Plan for the City as a Whole,” which all zoning-exemption decisions must honor, still dates from 1965.

Mr. Maloney emphasizes the benefits of its “integrated approach” combining planning/regulation and “economic development” (i.e., commercial construction). There is a difference between coordination and conflict of interest. The BRA is a redevelopment agency; its mission (and funding generator) lies in getting projects built. It cannot be an impartial planner and project regulator if it must promote construction. In all other cities with urban renewal authorities (not every city has one), the authority comes before a City planning agency for project approval, like any other developer; only in Boston do City Councilors come as supplicants before the authority.

Moreover, the BRA is in fact an “authority” – it is not part of the City government. Legally, it is accountable only to its own board. It is not accountable in any way to our 13 City Councilors (even when it spends money it gets from the City), and answers to the Mayor only because he appoints the Director and 4 of the 5 Board members. In no other city in America does the power to plan its future lie with an outside authority accountable to no one, funded by its own real-estate dealings, and shielded from judicial recourse. We vote for 14 offices, but only one of our elected officials has power to shape the city’s future. In a fundamental way, Boston, the cradle of democracy, lacks the basic structure of democracy: checks and balances among the executive, legislative and judicial branches of government.

Mr. Maloney states that the BRA operates without cost to the taxpayers of Boston. Where does its “self-sustaining” funding come from?

- The BRA sells and leases land it took by eminent domain paid for by taxpayers’ money (since the Feds abandoned Urban Renewal in 1974, City funds are often used).
- The BRA holds, tax-exempt, 450 properties totaling over 250 acres and worth, by my estimate, about \$2.5 billion (the Assessor’s value is \$350 million, an admitted underassessment since it’s exempt) which might pay about \$80 million a year in commercial taxes, and more if it were developed instead of land-banked.
- The BRA takes City-owned land by eminent domain without compensation, on the written instructions of the Mayor, depriving City Council of its statutory power to dispose of such property and its proceeds. All revenue from this land goes to the BRA, not the City. Recently, the Mayor funneled an acre of prime downtown development land, the Hayward parcel, to the BRA; the \$23 million bid the land fetched on the open market was lost to the City, and it was handed to a Mayoral favorite, Millennium/MDA developers, to profiteer as they wish.
- The BRA is an equity partner in some of the projects it regulates, including Rowes Wharf and the Charlestown Navy Yard. It may use its publicly funded land holdings as its investment share in new projects and thus has an interest in assuring the permitting and maximum profits for such projects. The BRA’s FY 2004 Budget states that real estate -- sales, rents, and equity participation -- will bring in over \$25 million.

- The BRA receives developers' "fees," including kickbacks for helping them profit by land speculation through regulatory manipulations, often using public land to assemble zoning-free sites.
- Appropriations from the City budget; the last one was \$750,000 to pay the new Chief Planner.
- The BRA occupies the entire 9th floor of City Hall, while City departments pay for space in other buildings.
- The BRA hands out untallied tens of millions of dollars yearly in tax breaks to big developers through Chapter 121A agreements (see the Boston Herald series, Feb. 9,10,11 of 2003), Tax Increment Financing (see the Boston Globe report of the Inspector General declaring these fraudulent), and other give-away programs.
- The BRA receives almost \$18 million in State and Federal grants for Jobs and Community Services programs that could go to the City's operating budget.

The BRA, with its staff of over 300 full-time employees, spends almost \$45 million a year, most of it to deprive us of control over our neighborhoods and advocate for developers. No City agency exists to truly plan our community -- our housing, schools, transportation, and jobs for residents (80% of the BRA's favored office tower jobs and 70% of institutional jobs go to suburbanites).

We pay dearly for the BRA's "free services": we have paid, for almost half a century, financial, environmental, economic and social costs beyond reckoning.

A recent study of California comparing cities with and with out redevelopment authorities found much more economic development in those that had none, and more money available for public services. Boston should do an evaluation of the BRA, to see its "planning" impacts and to decide whether to terminate the Urban Renewal Plans, which are about to reach their 40-year terms.

I urge residents who attend the BRA's neighborhood "conversations" to ask questions about these issues.