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thereafter is but an "incidental" aspect of the urban renewal process, akin to, if not identical with, the general municipal practice of disposing of city property no longer needed for public purposes. Retention of the land, they note, would be poor municipal stewardship because resale enables the community to recapture much of its initial outlay and to return the land to productive use and to the tax rolls.¹³²

Taken together, the three groups of cases indicate that the success of a recoupment challenge to the condemnation of preservation restrictions under the Chicago Plan is extremely unlikely, even though condemnation is connected with a scheme of selling development rights to fund the costs of condemnation. Like by-product sales, the transfer of development rights enables public agencies to recapture the costs of public improvements (the costs of preserving landmarks); to fulfill community needs that would go otherwise unmet (landmark preservation being impractical without the sale of development rights); and to ensure the productive use of valuable resources (the unused but authorized development rights of public and private landmarks otherwise being lost upon permanent designation).

The leasing cases reinforce this conclusion. They emphasize the legal irrelevancy of the fact that the sale of development rights may involve the city in competition with private enterprise if developers elect to purchase these rights rather than to acquire privately owned parcels in completing land assemblages. The leasing cases confirm that competition between government and the private sector is not legally objectionable so long as government enters the private marketplace in furtherance of a program that serves an independent public use. Questions concerning the financial feasibility of the Chicago Plan will also not be litigable under these precedents. Finally, charges that the Chicago Plan might involve a municipality in land speculation and other abuses will receive scant attention since the leasing cases establish that this question will be considered only if and at the time that such abuses eventuate.

The urban renewal cases offer further proof that, in and of itself, the recoupment feature of the Chicago Plan does not constitute a basis for the Plan's invalidation. Under the Plan the city retains a continuing interest in the landmark property in the form of a preservation restriction. Now that the city has the right to

zones.²³⁰ Hence, in pondering the advisability of adopting the Chicago Plan or any other incentive program for that matter, the community must ask itself — incentives for what? Resolving this question requires frank recognition that landmark preservation must compete with other worthy candidates for favorable regulatory treatment.

²³⁰The conflict of goals portrayed in the text has arisen in New York City. See Marcus.