

1-25-1924

## City Club of Portland Bulletin vol. 04, no. 16 (1924-1-25)

City Club of Portland (Portland, Or.)

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### Recommended Citation

City Club of Portland (Portland, Or.), "City Club of Portland Bulletin vol. 04, no. 16 (1924-1-25)" (1924). *City Club of Portland*. 41.

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"Harmony in  
Diversity"

# PORTLAND CITY CLUB BULLETIN

"Active  
Citizenship"

VOLUME IV

PORTLAND, OREGON, JANUARY 25, 1924

NUMBER 16

**FRIDAY, JANUARY 25**

**Hotel Benson, 12:10 Sharp**

READ THE CITY CLUB  
REPORT PUBLISHED BELOW

SPEAKER

**U. G. DUBACH**

*Professor, Political Science  
Oregon Agricultural College*

SUBJECT

**"Conditions in Latin America—  
Economic and Trade Possibilities"**

DR. DUBACH was invited three months ago to address the City Club, but he placed the date ahead to next Friday in order "to have the time to prepare a worth while talk for City Club men." His address before the Club two years ago on South America is still remembered. Don't fail to hear Dr. Dubach's analysis of conditions in Latin America with reference to resources, population, class system, "big holdings," political situation and economic conditions.

*AN INTERESTING AND INSTRUCTIVE MEETING*

**NEXT WEEK! AN OUTSTANDING TREAT OF THE NEW YEAR**

SPEAKER

**DR. EDWARD HUME, YALE '97**

*President of Yale University in China, "Ya-li," Changsha.*

**ALL PORTLAND YALE MEN ARE INVITED TO THIS MEETING**

## **"EXCESS CONDEMNATION" CITY PLANNING PRINCIPLE**

Presented for the approval of members of the City Club is the following report by a City Club Committee on the principle of EXCESS CONDEMNATION as applied to city planning. Publication of the report in advance of its reading will insure for everyone an opportunity to familiarize himself with the main details and recommendations. The report will come up for adoption next Friday noon. The Committee which made the study at the request of the Board of Governors is: John H. Lewis, chairman, Alton C. Allen, Lyman Griswold and L. F. Steel. The study follows:

### **TO THE BOARD OF GOVERNORS:**

Some months of study have informed us that the power of EXCESS CONDEMNATION has been adopted by many states and countries

as one of the necessary legal instruments to make city planning effective. Although this principle is little known in the West, EXCESS CONDEMNATION is not a new theory, but one that has been perfected through many years of trial and judicial construction. An outline of this report is as follows:

**WHAT IS EXCESS CONDEMNATION?  
ITS DEVELOPMENT IN OTHER STATES  
AND COUNTRIES.**

**ITS NEED IN PORTLAND.  
LEGISLATION REQUIRED TO MAKE  
EFFECTIVE.**

**I. WHAT IS EXCESS CONDEMNATION?**  
EXCESS CONDEMNATION, or incidental condemnation, as it is sometimes called, is the right granted public officials to condemn more land than is actually required to complete a certain project, in order:

*Continued on page 2*

# PORTLAND CITY CLUB BULLETIN

Published Weekly By

## THE CITY CLUB OF PORTLAND

Office of the Club . . . . . 308 Henry Building  
Telephone Broadway 8079

Subscription Price . . . . . \$1.00 per year

Entered as Second Class Matter, October 29, 1920, at the  
postoffice at Portland, Oregon, under act of March 3, 1879

### DINNER BIG SUCCESS

Nearly three hundred City Club members and guests descended upon Reed College last Friday night, attracted by the dinner entertainment arranged by Captain George Mayo and his cohorts on the Music Committee. No City Club audience was ever more "on time." Warned that reservations would be at a premium, the visitors to the campus could scarcely spend the necessary time to inspect the buildings for fear of being left out in the rush on the Commons-Union, the picturesque college dining room. Shortly after seven o'clock the whole party was assembled in the Commons expectantly waiting for the program to begin. The total attendance was 295, and there were twenty calls for places that could not be filled.

To Mrs. Eva Curry, director of the Reed Commons, is due every credit for a most excellent dinner and efficient service. She was assisted by Reed men and women. The students also superintended the parking of cars and acted as guides for the visitors.

The "mystery" of the program began to unfold at seven-thirty. Following an appropriate greeting by President Veness, a brief community sing was indulged in, and then Dr. Calvin S. White was handed the helm as toast-master de-luxe. Messrs. Mayo, Klein, Abbett, Harriman and Ross—the City Club Quartet—entertained with several beautiful numbers, repeatedly encored. Easton Rothwell, president of the Reed student body, put on a darkey stunt and closing this section of the program was a "cello" solo by Captain Mayo. Like the mystery of "The Bat," we are not permitted to explain this stunt.

The most sensational event of the evening was the parting of the curtains in one corner of the room, revealing the great invention by Mayo—the "Bulradiograf." This most ingenious device, a combination of ventilator from a large boat, electrical connections, fire bell, auto klaxon, and radio dials, was the *motif* for the broadcasting of music and several clever

"take-offs" on general City Club affairs, including a satire on a Board of Governors meeting.

After a heated, though bloodless combat, with the toast-master, Walter E. Stern talked about a subject which was not announced and which remained a "mystery" to the end—delivered in a style for which Walter is famous.

President R. F. Scholz, of Reed, as the final speaker, departed from the precedent of the preceding program to tell his City Club visitors a serious word about the work of Reed College and to invite their co-operation and interest. His message was enthusiastically received.

The visit to the Reed campus of the City Club party will prove a benefit both to the college and the club and should be repeated as an annual affair.

### "EXCESS CONDEMNATION"

Continued from page 1

(a) That the benefits may be more equitably apportioned through the purchase by the City and subsequent lease or resale of the property at advanced prices under suitable restrictions.

(b) That fragments of property adjacent to the improvement which are too small to build on may be purchased with the adjoining lot, so that the ownership of the two tracts may be united under one ownership by a subsequent resale. Logical development would follow without the usual long delay and loss of taxes resultant from private ownership in such cases.

(c) That the purchase of adjoining land for resale may be provided for in order to prevent its unregulated use in such a way as to impair the view, appearance, light, air and value of the principal improvement.

EXCESS CONDEMNATION is thus a method of acquiring that partial interest in adjacent land necessary to protect the large public expenditure in the main improvement.

A street widening program in the business section of a large city usually promises greatly enhanced values in property adjacent to the project. Yet, the certainty of immediate heavy assessments and the uncertainty of the benefits to result therefrom, causes the owners to protest against the improvement, or if ordered, to defeat the equitable assessments of benefits to their land. The public in turn may vote down the funds for a much needed improvements under the assessment plan through fears that the benefits will not be equitably assessed.

With enlarged powers under an EXCESS CONDEMNATION act, public authorities could take over *all* of the benefited land and resell the surplus at an appropriate time under suitable restrictions to insure a more certain increase in values than could be secured by private initiative alone, and all of which increase would be secured by the public. Certain restrictions increase the value and salability of

residential property, and we should be able to apply this principle to the business district.

Past experience has shown that it is sometimes necessary for the public to bear the entire expense of a much needed improvement in order to preserve the enormous values concentrated in the heart of great cities. The public then takes such risks as may be incident to the recovery of the cost through subsequent resale of the property at increased prices. Thus EXCESS CONDEMNATION will, at least, insure the improvement, probably without cost to the general taxpayer in the long run, whereas, under the old method, the project may be long delayed. Under the assessment plan, abutting property could be assessed for only a very low amount, or for such benefits as could be reasonably expected to accrue in a short period, while the uncertain benefits, which may later be received without cost to the abutting property, will be assessed to the general taxpayer, with no prospect of ultimate recovery. The loss, if any, to the public where EXCESS CONDEMNATION is applied, is not likely to be more than it would be assessed for under the old plan.

#### *Prevents Spite Work*

The completion of a street widening project or the cutting through of a new street often leaves fragments of lots on each side of the improvement which are not large enough for independent development, but which shut off the land immediately back of them from the new street, thus precluding its possibility of improvement. Occasionally these fragments are used to hold up the adjoining owner for an exorbitant price. If development of the new street is delayed until private initiative unites these tracts the public may lose much in taxes. This unregulated and uncertain development may give to the community a character which may permanently destroy not only values along the new street, but also in the adjoining district.

A whole network of streets together with intervening property may be taken over by public authorities where a great improvement project is contemplated. This principle is referred to as ZONE CONDEMNATION. An example of its use would be in developing Portland's waterfront, where many divergent property interests may make it impossible to undertake this project through private initiative.

The difficulty of uniting a large number of private property owners upon some comprehensive plan adequate for the commercial growth of the city is apparent to all. Without a suitable legal instrument to secure such benefits, if desired, we have no effective means of direct-

ing the growth of our city.

## 2. DEVELOPMENT IN OTHER STATES AND COUNTRIES

EXCESS CONDEMNATION, as a principle, was first adopted by France as early as 1807, but the first real zone condemnation law was not established until 1915.

The principle was first used in the United States by New York in 1912 and considerable use was made of the law until 1834, when the courts for certain technical reasons declared it unconstitutional. The practice was not revived until 1914 when Massachusetts enacted a somewhat similar law, and in 1911 amended its constitution so as to insure its legality. During the seventy-year interval after the New York law was held unconstitutional, much progress in city planning legislation was made in Europe.

The congested slum districts of London forced England to pass an excess condemnation law in 1845. Up to 1913 it is reported that London utilized this method in ninety street proceedings. The aggregate cost of these improvements, including the cost of surplus land, was approximately \$121,000,000.

Belgian enacted similar legislation in 1858 and in 1867 amended the law to permit zone condemnation as an aid to all city improvements.

In Montreal, Canada, three projects were carried out under an EXCESS CONDEMNATION law before the war, with profit to the city in each case.

#### *Used In the United States*

The states of New York, Ohio, Wisconsin, Rhode Island, New Jersey and Massachusetts have amended their constitutions so as to remove any doubt as to the constitutionality of excess condemnation acts.

In Milwaukee at the present time a new street is being opened in the congested section of the city. Two blocks from either side of this street project have been taken over by the city. It is expected that the resale of this property will approximately return the cost of the development.

In Oregon, property which is necessary for public use may be condemned. The term "public use" is a matter for interpretation by the courts in each case. Where the adjoining or excess land is necessary to protect the view, light or air, necessary for a public project, we believe the courts will uphold the constitutionality of an EXCESS CONDEMNATION law. However, there is sufficient doubt as to this point to warrant the adoption of a constitutional amendment to support any general excess condemnation law that may be enacted.

## 3. THE LOCAL NEED

There is already available, legislation (Chapter 269 Laws of Oregon for 1913) for the condemnation of "land and property in excess of what may be needed for public squares, parks or playgrounds." This excess right, however, is limited to not more than 200 feet beyond the limits of the park or playground.

This law, however, cannot be used for any

commercial purpose, or for the widening of a street, unless the street connects present or proposed parks and can be used as a parkway.

So great has become the congestion of Portland streets with automobile and street car traffic that projects aggregating approximately \$20,000,000 have been proposed to relieve the situation.

#### *Traffic Changes Needed*

In but a few years the Southern Pacific franchise on Fourth street will expire. Considering the present temper of the people it is doubtful whether the franchise will be renewed, yet, we need this line and must make some provision for it to enter the city. It is logical to suppose that the line will be expected to conform with some comprehensive traffic plan and will be assessed a fair share of the cost of such a project.

The Portland Railway Light and Power Company is now using the public streets for terminal purposes. As a result of the heretofore haphazard development of our street structure and traffic plan, street cars are now using busy streets for stops of unreasonable length and frequency. In some cases the cars travel on the wrong side of the street directly against the line of automobile traffic, thus causing consternation and delay. It will likewise be necessary for this company to conform to some comprehensive traffic plan, and pay a just share of the charges. Since it is a public utility, any unnecessary expense will react in increased fares, and it is therefore appropriate that any public plans to improve traffic conditions should also take into account the routing of cars and terminal facilities.

The Oregon Electric entrance on Tenth street should also be readjusted so as to not unnecessarily cross busy traffic arteries. There is also the freight entrance on Front street to be readjusted, and there is need for a common user belt-line railway on both banks of the river for switching purposes.

#### *Streets Will Be Widened*

With three-fourths of our population on one side of the river and the business center on the other, certain bridge approaches must be widened. Later, one or more north and south streets will need to be widened. Such increased values will be created in the land adjacent to these new improvements that the public will not stand to be taxed for large expenditures unless all the unearned increment of value thus created is secured by the public. This can be accomplished only by taking over such adjacent land through the EXCESS CONDEMNATION act.

Unless the legal machinery is provided to do

this in special cases, the values concentrated in our business district may be jeopardized and new improvements retarded by the uncertainty as to which of the many small outlying business districts may ultimately become the new business center.

In case a part of the city should be destroyed by fire as in the case of San Francisco or Astoria, it would then be very desirable to have a sound EXCESS CONDEMNATION law available so that a revised street plan could be worked out. The revised plan for San Francisco failed because all property owners could not agree. Our waterfront, through decay, is rapidly approaching the condition of San Francisco after the fire. If the property owners cannot agree upon some comprehensive plan for improvement in the near future, the project if desired will have to be built as a public enterprise.

#### RECOMMENDATIONS

It is the opinion of your committee that this new instrument of EXCESS CONDEMNATION be made available to our municipal authorities as early as possible. It is not recommended as an exclusive plan, to be applied in all cases, but is suggested for well defined projects, especially in the congested districts, where the costs are large and the usual plan of assessing benefits and damages would be difficult to apply.

We recommend as follows:

#### *Legislation Required*

1. That, a general statute be prepared and presented to the next Legislature for enactment, authorizing cities under proper restrictions, to condemn excess or incidental areas for any public purpose, including the cutting through of new streets or the widening of existing streets. This legislation should be broad enough to cover ZONE CONDEMNATION whereby a network of streets together with the intervening area, may be taken over by the public, and replatted, the excess area to be leased or sold under proper restrictions.

2. That a constitutional amendment should, if found necessary, be prepared at the same time authorizing such excess or zone condemnation, and that the Legislature be requested to submit the same to the people for enactment.

3. Early solution of this question being of importance to the City of Portland, we suggest that the subject be most thoroughly discussed and understood by the time the next Legislature meets.

We recommend that a copy of this report be sent to the member clubs of the Presidents' Council in order to secure their co-operation and support.