Legal Problems Confronting the Effective Creation and Administration of New Towns in the United States

Richard W. Hemingway

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INTRODUCTION

It may seem a startling statistic to some that the population in the United States is increasing at the rate of some three hundred thousand people per month. Stated more dramatically, this increase is equal in size to the addition, during a year, of twelve cities the size of Toledo, Ohio, or, in a decade, of ten cities the size of Detroit, Michigan. On a world basis the growth is even more startling.

In the United States even the casual traveler is concerned with the seemingly endless increase in meaningless urban sprawl. Some writers envision that the entire east coast of the United States, from Washington northward, will soon constitute a gigantic megalopolis.

The increase in urban population, as a percentage of total population from 1870 through 1960 was as follows:

<table>
<thead>
<tr>
<th>Region</th>
<th>1870</th>
<th>1960</th>
</tr>
</thead>
<tbody>
<tr>
<td>New England</td>
<td>44.4%</td>
<td>76.4%</td>
</tr>
<tr>
<td>Middle Atlantic</td>
<td>44.1 %</td>
<td>80.9</td>
</tr>
<tr>
<td>Great Lakes</td>
<td>21.6</td>
<td>73.0</td>
</tr>
<tr>
<td>Southeast</td>
<td>9.5</td>
<td>52.1</td>
</tr>
<tr>
<td>Plains</td>
<td>18.9</td>
<td>58.8</td>
</tr>
<tr>
<td>Southwest</td>
<td>6.9</td>
<td>72.4</td>
</tr>
<tr>
<td>Mountain</td>
<td>13.9</td>
<td>65.0</td>
</tr>
<tr>
<td>Far West</td>
<td>31.2</td>
<td>81.5</td>
</tr>
<tr>
<td>United States</td>
<td>25.2%</td>
<td>69.9%</td>
</tr>
</tbody>
</table>

*The following article is based upon a thesis submitted to the University of Michigan School of Law in 1968 in partial fulfillment of requirements for a Master of Laws degree.
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1 REPORT OF THE ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS—URBAN AND RURAL AMERICA: POLICIES FOR FUTURE GROWTH Appendix 1-B (1968) [hereinafter cited as ADVISORY COMM'N REPORT].

2 Id. at Appendix 1-C. In the ten years between 1960 and 1970, nationwide urban population has increased 19.2 percent. STATISTICAL ABSTRACT OF THE UNITED STATES 19 (96th ed. 1975).
It is a serious question, even with revitalization of the present American cities, whether they will be able to accommodate this future growth and, if able, to furnish a proper environment.

As long ago as 1898, an Englishman, Ebenezer Howard, greatly concerned with the plight of the City of London, became the forerunner of the garden city concept with the publication of his book, *To-Morrow: A Peaceful Path to Real Reform*, reissued under its present title, *Garden Cities of To-morrow*. Howard’s thesis was that excess population could be drained from large population centers like London, and be redistributed and rehoused in garden cities of limited population, located in the country. In time, many of his propositions were incorporated in English legislation: The New Towns Act of 1946, and the Town and Country Planning Act of 1947. Pursuant to this and later legislation, twenty one new towns have been, or are in the process of being, established in Great Britain. Of these, seventeen are located in England and four in Scotland. The enthusiasm of the English for the new town concept after the passage of early legislation is well summed up by Lloyd Rodwin:

The new towns policy, it was felt, could attack in one stroke a whole group of problems, including reconstruction, housing, and dispersal. London’s growth and congestion would be halted; housing, a major postwar need, would be rapidly provided in new balanced communities; population and economic activity would be redistributed for the benefit of other areas. For a while many planners were emboldened to believe that national planning in Britain might well be coupled with the three-dimensional vision of a New Jerusalem which inspired some of the members of the new government.

In addition to Great Britain, new towns have been established or planned in over fifty countries.
Due to the success, or assumed success, of new towns in these countries, much has been written in the United States to the effect that new towns should be built here to help house and redistribute overspill population from crowded cities. We have seen the start of over 100 so-called "new towns" in this country, which are now in varying stages of completion. In fact, as early as 1936 three Greenbelt Towns were created by the Resettlement Administration. In 1969, Reston, Virginia was hailed as the new Camelot; Columbia, Maryland has been planned as much by social scientists as architects and town planners; Irvine, California is hailed as a new intellectual center on the West Coast; Lake Havasu, Arizona proclaims itself as the retirement city beyond compare, complete with the London Bridge. However, on the other side of the coin, Reston has been taken over by its major investor, Gulf Oil Corporation, due to lack of sales; Sunset/Whitney Ranch, Leisure World, and El Dorado Hills, California, have suspended sales, and Joppatown, Maryland went to bankruptcy with flags flying.8

It is the purpose of this study to determine what has contributed to the success of the British New Towns program; survey what is being done in the United States; and to determine, if possible, whether a similar approach may be taken to the construction of New Towns in the United States. The study is directed towards the legal problems that will be inherent in the creation and administration of New Towns in this country, rather than social and other environmental aspects of town planning.

I. NEW TOWNS IN GREAT BRITAIN

I see a City being wrought
Upon the rock of Living Thought:
Upon her rising walls I look,
And every stone is like a book

O many milk-white pages, fair
Imprinted, with a loving care;
While on each lovely page is set
Word of a wisdom lovelier yet.

Henry Bryan Binns

towns have been created since 1945. For general information on land planning in foreign countries, see G. Burke, Greenheart Metropolis, Planning the Western Netherlands (1966); D. Cronin, Town Planning in Ireland (1965); T. Floyd, Town Planning in South Africa (1960); M. Gouldman, Legal Aspects of Town Planning in Israel (1966).

Before going on to an examination of the ideas of Howard and the manner in which they came to be represented in English legislation, it may be well to define generally what is meant by the terms "garden city" and "new town". Although Howard, as we will see, would have found some distinction between these terms, for the purpose of this discussion they will be deemed to be synonymous. A new town, then, is defined as a community, more or less economically and socially balanced, which together with its supporting industry is strategically located for the purpose of absorbing population pressures of other urban areas or otherwise redistributing population and industry.

New towns are not new. Although Ebenezer Howard may be the modern precursor of the use of garden cities or new towns, limited in area and population for the purpose of housing excess inhabitants, this form of growth was followed by the Greeks, for the same purposes, from the fourth to the sixth century B.C. Interestingly, Leonardo da Vinci had proposed to use a system of ten satellite towns of not more than 30,000 inhabitants each to relieve the population pressures of Milan. However, it was not until the obscure English court reporter, Howard, had published his book on garden cities in 1898 that a movement became apparent, although perhaps not rampant, for this type of city planning in contemporary society.

In a preface of the 1945 edition of Howard's book, the eminent authority on cities and urban problems, Lewis Mumford, stated:

At the beginning of the twentieth century two great new inventions took form before our eyes: The aeroplane and the Garden City, both harbingers of a new age: The first gave man wings and the second promised him a better dwelling-place when he came down to earth.

It is perhaps not surprising that someone like Howard would come up with proposals for the building of satellite garden cities. Howard, in his youth, visited the United States and became acquainted with Chicago, which was then known as the "Garden City" of the United States. Upon returning to London he was again appalled by the increasing population density, squalor, high rents and costs, separation from work and home, and sickness. Although he had little formal education, he was well acquainted with matters of law and finance, and had been exposed to the views of some of the best minds of the age in his job as a court reporter. Even then, England was one of the most densely populated areas in the world, and it was greatly impressed upon him that competing claims to the use of land could be better settled.
It was imperative to Howard's plan that garden cities be so built that they, both from an aesthetic and economic viewpoint, would draw population from large urban areas (principally London). In answering the question: "The people, where will they go?", he verbalized the attractiveness of the city and the country as magnets. It was his idea to combine the best qualities of both in his garden city, which he denominated the Town-Country Magnet: "Beauty of nature, social opportunity, fields and parks of easy access, low rents, high wages, low rates, plenty to do, low prices, no sweating, field for enterprise, flow of capital, pure air and water, good drainage, bright homes and gardens, no smoke, no slums, freedom, co-operation."

The vehicle to accomplish this result, to create the town-country magnet was the garden city:

Each city may be regarded as a magnet, each person as a needle; and, so viewed, it is at once seen that nothing short of the discovery of a method for constructing magnets of yet greater power than our cities possess can be effective for redistributing the population in a spontaneous and healthy manner.\^11

Each Garden City would not exceed a population of about 32,000. It is surprising that this is very close to the value chosen by da Vinci, whose writings were not available to Howard. However, Howard's idea of a Garden City encompassed more than the idea of using new towns of limited population. He was one of the first to perceive that a town must be planned as a unit, both as to design and purpose, and to eliminate the chaos resulting from ad hoc growth resultant in virtually all towns at that time. Howard also recognized that such a result could only come from the co-ordinated efforts of many individuals.

Although Howard anticipated that a unity of design and purpose would be attractive to city dwellers, he also thought that this would be insufficient, by itself, to draw people from the urban areas in large numbers. It was also necessary that life in the Garden Cities be economically attractive. To this end, Howard advocated that very little of the land be sold—on the contrary, that the land remain in ownership of a trust for the people of the garden city. Revenues would be raised from rentals to be charged to the residents. This would also give the trustees a monopoly upon the stores and other services if desired. In the words of Howard:

The estate is to be legally vested in the names of four gentlemen of responsible position and of undoubted probity and honour, who hold it in trust, first as a security for the debenture-holders, and secondly,
in trust for the people of Garden City, the Town-Country magnet, which it is intended to build thereon. One essential feature of the plan is that all ground rents shall be paid to the trustees, who, after providing for interest and sinking fund, will hand the balance to the Central Council of the new municipality, to be employed by such Council in the creation and maintenance of all necessary public works, roads, schools, parks, etc.\(^{12}\)

Integral with the ownership of the land by a trust was the fact that a garden city would be built in a country area prior to the time that land would appreciate in value due to the increased activity. As the city would be constructed upon land of relatively low value, the entire increment of value which would gradually be created would become the property of the city governing body. Hence, rents would be applied in relief of rates. This would form the second arrow in Howard's bow; that the low rental in comparison to rates in the large cities should be sufficient to attract large numbers of erstwhile urban dwellers.

Sir Howard, as he was later knighted, was criticized on the basis of being a socialist. Howard answered such critics by stating that he had indeed borrowed from "Socialism in its large conception of common effort, vigorous conception of municipal life" but "from Individualism in the preservation of self-respect and self-reliance."\(^{13}\) He believed that he had obtained a marriage of the best to be offered from both the socialistic and capitalistic philosophies.

Although somewhat beyond the scope of this discussion, Howard also envisioned that such garden cities should be clustered in a new municipal structure with groupings of relatively small greenbelt towns integrated in a federalized-type structure. In this manner, freedom of the individual, and the benefits of nature and country were to be maintained, together with the advantages to be derived from a larger overall governmental structure.

Howard prophesied:

One small Garden City must be built as a working model, and then a group of cities such as that dealt with in the last chapter. These tasks done, and done well, the reconstruction of London must inevitably follow, and the power of vested interests to block the way will have been almost, if not entirely, removed . . . and, when our first experiment has been brought to a successful issue, there will be no great difficulty

\(^{12}\) Id. at 51.

\(^{13}\) Id. at 131.
in acquiring the necessary Parliamentary power to purchase the land and carry out the necessary works step by step.\textsuperscript{14}

Following the publication of his book, Howard did not retire, but, on the contrary, was very vigorous in stirring up such sentiment as he could for his views. In 1899, he formed The Garden City Association to publicize and promote the garden city concept. The Association, now named the Town and Country Planning Association, has had a continuous existence and has been called the historic sponsor of town and country planning in England.\textsuperscript{15} In a magazine published by the Association, proponents of the new town viewpoint presented their views. It is interesting to note that many persons influential in effecting new town legislation and urban planning have been active members of this group. From about 1904 other voluntary associations for advocacy of the garden city concept were begun in France, Germany, Holland, Italy, Belgium, Poland, Czechoslovakia, Spain, Russia, and the United States.

Again Howard was not satisfied only with the promulgation of his ideas. Nothing less than the construction of a garden city to demonstrate the values of the town-country magnet and to prove his critics wrong would be sufficient. The result was Letchworth Garden City, the first of England's new towns.\textsuperscript{16}

Letchworth was started by a company formed in 1903 which was greatly undercapitalized. In addition, the town itself was poorly located on a branch railroad line 35 miles from London, then quite a distance away. The town followed the ideas of Howard's Garden City, but not nearly with the results that had been anticipated by Howard. In the early years, Letchworth was not popular and did not have the influencing effect on London residents that Howard expected. Movement to the town was slow, its architecture was criticized as were many of the underlying policies. Management was weak, and apparently some tension existed between the persons responsible for management. However, it was a pioneer and innovator in the use of overall planning, utilizing use and density zoning, greenbelts, neighborhood planning, and other concepts. It took some 20 years before a modest five percent return was realized, and a total of some 43 years before payout.

\textsuperscript{14} Id. at 146, 159.

\textsuperscript{15} See G. KEABLE, TOMORROW SLOWLY COMES (1963) [hereinafter cited as KEABLE]. This booklet tells the story of the new towns and the efforts for their creation through the eyes of the Town and Country Planning Association. The members seem to have been a combination of romanticism (see poem at beginning of Section I ) and practicality.

\textsuperscript{16} See generally OSBORN & WHITTICK, supra note 7, at 43-52, which covers in detail the stories of both Letchworth and Welwyn Garden City. Other versions are set forth in Osborn's preface to Howard, supra note 3 and RODWIN, supra note 6.
On the other hand, Osborn has stated that by 1962 the equality values of the stockholders had appreciated to nine times their original investment; the dividend for 1961 was 16 percent on doubled capital, and population had increased from 400 to 25,000.

Today, it seems that Letchworth may at long last lay claim to success. In the words of Frederick Osborn:

Industrially and commercially it can be claimed that Letchworth has been a conspicuous success... It created a town as healthy as any in the world, a well-serviced town in which every family can live in a house with a good garden within easy distance of work, the town centre and open country. It demonstrated that a town based on modern industry can be economically and socially viable, even if built well out of the immediate sphere of influence of a metropolitan centre. And it proved that a new town with an agricultural belt can bring stimulus and the advantage of alternative employment and many services to the surrounding villages and countryside without prejudice to commercial agriculture.\textsuperscript{17}

Not entirely happy with Letchworth as a demonstration city, Howard precipitously plunged into the forming of a new city, and in 1919 Howard formed another company to build the town of Welwyn Garden City. This town again was located in what was considered a bad location, again under-financed, and in addition was being advocated at a time when Letchworth was hardly out of the woods as an example of economic soundness. In the estimation of almost everyone it was thought to be doomed to abject failure. Although Letchworth was unable to capture the rise in land values for the residents of the city, this was better accomplished in Welwyn, where management was better able to eliminate economic leakage. It is noteworthy that the company maintained throughout its existence, some 28 years, planning standards of high quality in every area, with the result that in nearly all aspects Welwyn Garden City has greatly surpassed Letchworth. In short, Welwyn Garden City has somehow survived and today is considered one of the masterpieces of town planning.

So much for Howard; he pioneered, or at least revived a new concept in town planning, and by his perseverance created two garden cities to demonstrate the viability of his town planning concept. These would be merely of passing interest today, except for the effect of his efforts upon town and country planning legislation in England, which in turn has affected, to some extent, all countries engaged in building new towns.
Howard's concepts, however, have not been without criticism. Professor Rodwin, in his book, *The British New Towns Policy*, has branded Howard and his band of believers a bunch of amateurs to whom success was little more than a happy happenstance. He would criticize Howard on the following grounds:

(1) That Howard was mistaken in his ideas as to the optimum size of cities, which were based upon a concept of a static and relatively grows; also whether the cost of creating a garden city is not more function of the services and particular tasks therein performed and the effect of scale upon the efficiency of the performance;

(2) Howard was mistaken in his assumption that the working man should be located within walking distance of his work. The automobile had not yet developed, and mobility today is necessary for a flexible, hence efficient, working force;

(3) Howard was mistaken that garden cities could be located any-where, and that merely creating low rent in the country would attract industry. For without the attraction of industry, a viable city cannot be created;

(4) It is questionable whether in all cases costs of cities rise as a city grows, also whether the cost of creating a garden city is not more expensive than other physical patterns that would be developed in any event; and,

(5) Rodwin sees defects in Howard's ideas of separate administration of towns without regard to other towns in the area and without regard to the problems of local government, where the geographic area governed is not contiguous with a single community.

It may be answered that whatever specific defects exist in Howard's planning, the overall vision of a town as an organic whole, with each function complementing the other, each to be co-ordinated for optimum efficiency with the other; to have such a town limited in growth, balanced in economic opportunity, in short, to create a "balanced, many-sided, interrelated organic unit," may not be depreciated. It is interesting to note what Frederick Osborn, a prominent member of the Association, has to say about Professor Rodwin:

Yet to a participant in the events he so vividly described he seems grossly to over-dramatize the conflicts and difficulties that arose in

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18 The four basic principles of Howard are:

1. Limitation of numbers and area.
2. Growth by colonization.
3. Variety and sufficiency of economic opportunities and social advantages.
4. Control of the land in the public interest.
the creation of new towns—which have not been remarkably greater or less than those which are met in any constructive enterprise of like magnitude . . . and concluded in the end that we were blue-eyed enthusiasts who had no inkling of what we were up against when we started, but, being typical unscientific Britishers, had blundered into an astonishing degree of success that our lack of foresight didn't entitle us to.

He is scholarly and in intention objective, and quotes experts and idiots with delightful impartiality and great entertainment value.19

II. THE BRITISH NEW TOWNS LEGISLATION

A. History

Although Letchworth was a substantial town by the end of World War I, and Welwyn Garden City was started in 1920, they had little influence upon British planning policies at that time. Housing after World War I has been described as dreary; the development of the countryside was piece-meal; increased expansion of London into agriculture lands was caused by the development and use of the automobile, as workers found they could live farther and farther from their jobs. Rather than adopt an overall planning policy, treatment of festering problems was attempted by ad hoc planning and legislation for a specific problem. Against this background, the Town and Country Planning Association was striving to no perceptible avail.

During the period of time from 1919 to 1939 the population of London increased by 750,000 due to natural increase, but in the same period increased some 1,250,000 people due to migration. During this same period industry in London was burgeoning and uncontrolled.20 Matters became so bad that Sir Malcolm Stewart, the Commissioner for England and Wales under the Depressed Areas Bill, felt that the further expansion of industry should be controlled. The answer of the conservative government was to appoint the Barlow Commission in 1937 — The Royal Commission on the Distribution of the Industrial Population.21 The findings and reports of this commission, especially the minority report, were to furnish the cornerstone of British town and country planning.

19 OSBORN & WHITTING, supra note 7, at 90.
20 For a more detailed discussion of the history of English planning law from 1920 to 1940, see J. CULLINGWORTH, TOWN AND COUNTRY PLANNING IN ENGLAND AND WALES (1964) [hereinafter cited as CULLINGWORTH]; C. HARR, LAND PLANNING LAW IN A FREE SOCIETY (1951) [hereinafter cited as HAAR]; O'SBORN & WHITTING, supra note 7; RODWIN, supra note 6.
21 CULLINGWORTH, supra note 20, at 23; HAAR, supra note 20, at 14; O'SBORN & WHITTING, supra note 7, at 68; RODWIN, supra note 6, at 18. See also Note, The Administration of the English New Towns Program, 1965 Wash. U. L. Q. 17.
The Commission was charged:

to inquire into the causes which have influenced the present geographical distribution of the industrial population of Great Britain and the probable direction of any change in that distribution in the future; to consider what social, economic or strategic disadvantages arise from the concentration of industries or of the industrial population in large towns or in particular areas of the country; and to report what remedial measures if any should be taken in the national interest. 22

Although there seems to be some difference in the interpretation as to the scope of the terms of reference, 23 the Committee, in fact, did not limit itself to a narrow interpretation. It was recognized that industrial congestion was of particular severity in the City of London, and the majority addressed itself primarily to this aspect. The majority also recommended that, if desirable, dispersion and decentralization should be encouraged in garden or satellite towns. This latter statement opened the door for further study of the use of new towns for population redistribution. It was recommended that a Central Authority be used to alleviate the conditions, and although a national policy was called for, that the Central Authority be limited in immediate action to executive powers to regulate additional industrial building in London and the home counties. However, three members of the Committee signing the Majority Report felt that the powers should be transferred to a new board that had regional powers to enable it to make certain inducements as necessary to secure a balanced distribution of industry.

The writers of the Minority Report felt that some urgency existed, due to wartime rearmament, for rebuilding industry and redistributing population and that the powers and the Board proposal were not strong enough. It was vigorously recommended that a new Ministry exercising full executive powers be created. However, with the differences as to the type of executive organ desired, the substantive content of both reports were remarkably similar. The Town and Country Planning Association felt that the Barlow report, on balance, was largely in conformity with its avowed policies. 24

The Barlow Committee was followed by the appointment, in 1941, of two other committees, the Scott Committee on Land Utilization in Rural

22 CULLINGWORTH, supra note 20, at 23.
23 Compare CULLINGWORTH, supra note 20, at 24 ("These very wide terms of reference represented, as the Commission pointed out, 'an important step forward' in contemporary thinking"), with HAAR, supra note 20, at 14 ("Ostensibly limited by its terms of reference to the problem of the dispersion of industry and the industrial population . . .").
24 KEARLE, supra note 15, at 28.
Areas, and the Uthwatt Committee on Compensation and Betterment. Each Committee strongly advocated the formation of a strong central planning authority. These were followed by the enactment of the Town and Country Planning (Interim Development) Act of 1943 and the Town and Country Planning Act of 1944. The former increased the powers of local authorities to control development and the latter extended to local authorities powers of comprehensive redevelopment of areas ravaged by the war.

Critical to the development of new towns legislation in England at this time was the fact that following the end of the war, the Labour Party was elected to office. It was felt that comprehensive programs had to be undertaken to repair war damage, which the Labour Party pledged. Four months after taking office, Lewis Silkin was named the new Minister of Town and Country Planning. He immediately appointed Lord Reith Chairman of a New Towns Committee and charged him to:

consider the general questions of the establishment, development, organization and administration that will arise in the promotion of New Towns in furtherance of a policy of planned decentralization from congested urban areas, and in accordance therewith to suggest guiding principles on which towns should be established and developed as self contained and balanced communities for work and living.

It is interesting to note that Lord Reith, F. J. Osborn and two other members of the Committee were members of the Town and Country Planning Association, as were Sir A. Montague-Barlow and Sir Patrick Abercrombie, the latter being the leader of the group signing the Minority Barlow Report. Suffice it to say that the Reith Committee recommended that new town development be undertaken by government development corporations and that the Committee's report led directly to the New Town Act of 1946. Much of the basic framework of the Act was derived from the experience of members of the Committee who were involved or deeply interested in the creation and administration of Letchworth and Welwyn Garden City, which were so greatly hampered by undercapitalization. Basic to their recommendations also was the thought that the dispersion of industry should be coordinated with the building of the new towns. Osborn and the Association claim full credit for the new towns legislation:

We claim full success for the first stages of the British experiment in creating new towns. That is not to say they meet every possible requirement of every kind of human being, every personal or associated

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25 HAAR, supra note 20, at 17; N. MacKENZIE, THE NEW TOWNS: THE SUCCESS OF SOCIAL PLANNING 4, 5 (1955) [hereinafter cited as MacKENZIE]; Rodwin, supra note 6, at 19.

26 Osborn & Whittick, supra note 7, at 25.
activity in urban civilization. No town, old or new, is perfect in this sense; none ever will be. But in fundamentally important respects these towns mark an immense advance on any type of industrial towns that preceded them. They provide their inhabitants with good homes in healthy, pleasant and well-planted surroundings, never far from the open country and in most cases near their places or work. They are centres of efficient and advancing industry and commerce. They are equipped with modern urban services, schools, shops, churches and public buildings. And they are financially sound; not only more economical to construct and maintain than any alternative type of development, but positively remunerative as capital investments.\(^{27}\)

From the background of the New Towns Act of 1946, the principals involved in its enactment and the work of the Town and Country Association, it may be said that Professor Rodwin is too deprecatory as to the efforts of the group of town and country planners which were the outgrowth of Sir Ebenezer Howard’s efforts, amateur though they may have been. Many of the most distinguished names in British planning were members of the Association. As we will see, and as is admitted by Professor Rodwin,\(^{28}\) The New Towns Act of 1946 incorporates many of the ideas first set forth in Sir Howard’s book.

**B. Purpose and Structure of New Towns Legislation**

New towns have been created in Great Britain in a variety of forms to serve differing purposes. Such housing has successfully housed overspill from populated areas, has provided housing for industrial expansion, and in a few instances has successfully relieved poor housing in depressed economic areas by substitution of new housing.

New towns have been built for the purposes of relief of population congestion of certain cities and areas. In addition, Peterlee and Glenrothes were attempts to substitute a new town for squalid mining villages; Newton Aycliffe was created to provide housing for people working in the Aycliffe Industrial Estate; Corby provided housing for workers in a steel plant; Hatfield was provided for employees of Dellaviland Aircraft Company (now

\(^{27}\) *Id.* at 133.

\(^{28}\) *RODWIN, supra* note 6, at 57.

On the whole, the New Towns Act of 1946 represents Howard’s ideas translated into a national policy. In the process there were changes of emphasis, of course. One example was the acceptance of London’s metropolitan stature; another was the role of new towns as satellites of London; a third was the eventual adaptation of new towns for other purposes than channeling growth or redistributing population of the giant cities; still other differences lay in the scale of the program and many of the unexplored details of execution. Nonetheless, Howard’s ideas on the object, the size, and the essential characteristics of new towns are everywhere in evidence.
Hawker Siddeley); Howard's Welwyn Garden City was designated a new town under the 1965 New Towns Act, in order to increase its rate of growth. Such towns have also been created in a variety of forms: As self-contained communities located in rural areas to help create population centres where thought to be desirable; as self-contained satellite communities to house overspill from major population centres; as integral parts of existing communities and regions to serve an overspill function. As the location and type of each new town will be determined by particular circumstances, it is apparent that the New Towns Legislation has provided the needed flexibility and adaptability to differing situations. Largely this was accomplished by not hamstringing the Ministry with a fixed framework of criteria for creation of new towns.

It is important to note that the basic purpose of the new towns legislation was to provide for balanced communities. These are to be self-contained communities, containing the requisite population together with all supporting facilities: industrial, social and cultural. It may be noted here that this concept is contrary to the so-called new towns that have been built in the United States, which for the most part have been dormitory suburbs. However, some of the latest American new towns seem to have been designed with a broader concept in mind.29

The New Towns Act, 194630 was the first attempt to plan and build new cities and towns as part of a long range national policy. Together with legislation providing for overall national supervision of land use planning,31 for the distribution of industry and employment in localities with danger of unemployment;32 for redistribution of large numbers of population from

29 This is particularly true of Columbia, Maryland and Reston, Virginia, but even so, these towns will be more homogeneous economically than the British new towns which cater to the low and low-middle class. Both Reston and Columbia have been subject to some criticism for failure to have a broader economic and ethnic base.

30 See note 4 and accompanying text supra.

31 See note 5 and accompanying text supra. The stated purpose of the 1947 Act is to make fresh provision for planning the development and use of land, for the grant of permission to develop land and for other powers of control over the use of land; to confer on public authorities additional powers in respect of the acquisition and development of land for planning and other purposes, and to amend the law relating to compensation in respect of the compulsory acquisition of land; to provide for payments out of central funds in respect of depreciation occasioned by planning restrictions; to secure the recovery for the benefit of the community of development charges in respect of certain new developments; to provide for the payment of grants out of central funds in respect of expenses of local authorities in connection with the matters aforesaid; and for purposes connected with the matters aforesaid.

32 Local Employment Act of 1960, 8 & 9 Eliz. 2, c. 18, as amended by the Industrial Development Act of 1966, c. 34. The 1960 Act is designed to “make provision to promote employment in localities in England, Scotland and Wales where high and persistent unemployment exists or is threatened, and to make consequential provision as respects the industrial estate companies . . . .”
areas of over-population to areas of under-population, the new towns legis-
lation formed a portion of the most ambitious and co-ordinated program of
land-use and population planning yet attempted.

The stated purpose of the original New Towns Act, 1946 was "to
provide for the creation of new towns by means of development corporations,
and for purposes connected therewith." With the enactment of the New
Towns Act of 1965, the overall legislative purpose had not changed but
it was necessary thereupon to gather together and consolidate provisions
scattered through the statutes which were found necessary to the operation
of the new towns legislation and to adjust and tune up the legislation for
more efficient functioning.

At the top of the structure of the New Towns Act of 1965 is the
responsible agency of the central government. For England and Wales, it
is a new Ministry: The Ministry of Housing and Local Government. In
Scotland, responsibility is with the Department of Health for Scotland. It
is the responsibility of the Ministry to study and designate an area to be
used for a new town site. Upon such designation the Ministry thereupon
creates a public corporation — the Development Corporation — which
is charged with the actual planning, acquisition of land, and construction.

C. Response to the Legislation

Since its inception, the British New Towns program has been both
vigorous and enthusiastic, and has been successful in creating new housing
for more than one-half million people. Within England, Wales and Scotland
many new towns have been built or begun. In the words of the Official
Handbook for Britain:

The new towns represent a notable achievement in positive land use.
They are generally recognized as one of the most successful post-war
experiments, both socially and industrially, and as a profitable long-term

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83 Town Development Act of 1952, 15 & 16 Geo. 6, & 1 Eliz. 2, c. 54. This is an Act "to
encourage town development in county districts for the relief of congestion or over population
elsewhere and for related purposes . . . ."

84 New Towns Act of 1946, 9 & 10 Geo. 6, c. 68. The provisions of this Act were repealed

purpose of the New Towns Act, 1965 is "to consolidate certain enactments relating to new
towns and to matters connected therewith being (except in the case of section 1(1) of the
New Towns Act of 1964) those enactments in their application to England and Wales; with
corrections and improvements made under the Consolidation of Enactments Act, of 1949."
For a history of the New Towns Act, 1965, and a table for repeals, see HEAP, ENCYCLO-
PEDIA OF THE LAW OF TOWN AND COUNTRY PLANNING §2-2013 (1959); New Towns Act,
1965 856; sched. 12.

86 See BRITAIN, AN OFFICIAL HANDBOOK (The Central Office Information, London 1968).
investment. More than half a million people have moved into the new towns during the past 20 years and an extensive building and civil engineering programme has provided houses, flats, factories, schools, shops, churches, health centres and libraries as well as public buildings including the town hall and law courts. Roads, water supplies, sewerage, gas and electricity, police, fire and bus stations, postal, telegraph and telephone facilities have also been provided; most of the towns are well equipped with parks and playing fields of various kinds. All towns have become concerned with the increasingly high level of car ownership of their inhabitants and are making more adequate provision for parking and the segregation of pedestrians from motorists.

A number of the more developed towns are becoming regional centres and, as the populations grow large enough to give the necessary support, offices and hotels as well as full entertainment and recreational facilities such as skating rinks, dance halls, bowling alleys, swimming pools, sports stadia, golf courses and youth centres are gradually being provided.

Not only has the new town been adulated, the use of the public corporation has been lauded as the ideal tool:

But the truth is that the wide powers available under the New Towns Act, the fact that large financial deficits can be carried, and the ability to become monopoly landowner as well as planning authority for its area make the development corporation an extremely effective instrument of public purpose. The combination of power of finance and a clear development directive imparts considerable drive to any corporation, even one of modest competence — provided it is given a realisable task.37

D. Problems in Implementing the Legislation

(1) The Trend Toward Higher Density Towns

The concept of relatively small, low-density, self-contained towns has not been altogether a successful one; in the latest generation of new towns, the trend is towards larger, higher-density towns with less self-containment.

The towns first built under the New Towns legislation were strongly oriented to Howard’s ideas of low population/acreage ratios, and an effort was made to emulate the environment of Howard’s early “Garden Cities”. The average new town occupies 2850 acres, is populated by 37,000 people, resulting in a density of about 13.6 people per acre. The density ratio of the four new towns which have been transferred to the Commission is 15.2 people per acre. In addition, pedestrian and automobile traffic were segre-
gated without adequate provision being made either for automotive traffic or storage. The results have been strongly criticized:

Translated into town planning jargon, this quality of ebbingness becomes low density housing — the results are deplorable — footsore housewives, cycle weary workers, never ending characterless streets, the depressing feeling of being a provincial or suburbanite in an environment that does not belong to town or country, and the impossibility of even getting into the real country which this suburban sprawl has banished . . . To sum up, the New Towns, except for rather better house plans, have advanced but little on the old housing estates. In the sense that they tend to occupy more valuable land they are actually a step back.\(^\text{38}\)

Washington New Town has been called by one writer a Mark III new town, evidencing in his estimation a third generation of British new town planning.\(^\text{39}\) Washington New Town will feature a higher density ratio than earlier towns and is not planned as a unit which will be self-contained and complete in itself. Rather, it is one of the first of the new towns to be planned as an integral part of the city-region it will serve for population overspill purposes. Prior to 1962, it was the attitude of the Minister that a new town was unsuitable for development where it was not self-contained and where relatively long distances of travel to work were necessary.\(^\text{40}\) This attitude may be traced directly to Howard and was reversed by the approval of Washington New Town in 1964. Washington New Town appears to be more in the nature of a bedroom community as have been built in the United States and which will utilize the social, recreational and shopping facilities of the communities they serve.

\((2)\) Financial Difficulties

Although new towns have proven to be paying propositions, the 1965 New Towns Act, at least as administered, has not eliminated all financial problems. Expense has been high with resultant high cost and inability to attract people in lower economic levels.

Strong proponents of the new town movement have been adamant that where the construction or managing agent has substantial control of the rental revenues from residences, business and industry, together with the rising increments of land value, new towns can be commercially paying.\(^\text{41}\) Sufficiently so, in fact, as to be attractive for investment purposes.

\(^{38}\) Rodwin, supra note 6, at 87.
\(^{40}\) Id. at 62.
\(^{41}\) Id. at 96; MacKenzie, supra note 25, at 10.
Although the British Act was designed to eliminate the problems of under-capitalization that were encountered by Howard, it is not apparent that this has been completely successful. Initial costs of investment are very high. They may be further augmented where the burden of construction in connection with local authorities is also shouldered by the development corporation. It is usually necessary to install public utilities with a long lead time over actual use by anticipated residents. Capacity has to be built for average projected uses. With little or no tax base or return from rentals such advance construction costs are a very great burden upon the development corporation. This has been somewhat offset by the grants of the Minister for the first several years. However, the upshot has been that rents are set to reflect the absorption of these overhead costs which has resulted in rents above the competitive market for new housing.\(^{42}\) This in turn aggravates the financial picture as the high rents fail to attract people in the middle and lower middle class, at whom the thrust of the Act is directed. As many of the new towns have been created in areas where there is occurring an outward migration due to poor housing and unemployment, it becomes extremely hard to induce others to return to such areas where such high rentals are a detrimental element and not an inducement.

(3) \textit{Industrial Placement}

Lack of central control and non-cooperation between Ministries has resulted in a lack of coordination between the creation of new towns and the location of industry and other vital services.

On the surface the new towns program would seem to provide a workable method in enticing people to the areas of a new town. However, in addition to increased rents that many times result in the early stages of new town construction, the placement of industry by the central government has left a lot to be desired at times. The Act contemplates that co-operation will exist between the Minister of Housing and Local Government and other branches of the central government in order to create a favorable industrial and economic environment. However, this has not always occurred.

The Board of Trade exercises control over industry by means of certificates necessary for the relocation of industry. The Board has the power and does offer economic inducements to enable it to relocate industry successfully. However, no such ability exists in the development corporation or in the Ministry of Housing and Local Government. As in most governmental agencies, great differences of opinion may exist between the two as to the location of industry in a new town, in which case the new town comes out on the bottom of the totem pole.

\(^{42}\) Rodwin, \textit{supra} note 6, at 167.
(4) Friction Between the Development Corporation and Local Authorities

Creation of the new towns has been accomplished by use of public corporations as the agents of the central government. This has the advantage of centralized control of planning and execution. However, through the approach of a sometimes inflexible policy largely independent of the desires of local authorities, a great deal of needless animosity, hostility and friction has developed between the development corporations and the affected local authorities. It may be seriously questioned whether a more efficient program would not have resulted if the Act had required more active participation by local authorities and local residents in the planning and construction of the new towns.

Probably the most persistent problem, and one which appears to be no closer to solution now than at the beginning of the new towns program has been the friction between the development corporation and the local authorities. Mention has already been made of problems of sharing of construction costs between the development corporation and the local authorities. Harlow, Aycliffe and Crawley are prime examples of this type of hostility.43

(5) Failure to Relieve Population Pressures

The program has not been successful in reducing congestion of and decentralizing heavily populated areas to any great extent. Co-equal with Howard's desire to create a town with the combined "magnets" of both town and country, and perhaps of more importance, was his desire to reduce congestion of the City of London. He thought this would occur as a natural result when the first new towns were created. This has not occurred and no national long-term policy was ever developed to this end. As a matter of fact, although the British have perhaps been their own best advocates, they have also recognized that the creation of the new towns has done little to curb population pressures and to decentralize the large cities. To this extent Howard was wrong. He had no conception of the rate of population growth that would exist in the 20th century.

III. NEW TOWNS IN THE UNITED STATES

As mentioned earlier, the influence of Ebenezer Howard has been everywhere evident. This is no less true in the United States than in other countries where concern has existed as to the present and future condition of the cities. America's counterparts of Sir Howard are Clarence S. Stein and Henry Wright; later, others like Professor Mumford and Albert Mayer.
became advocates of the garden city idea. Like Howard, Stein was concerned with social planning, rather than merely commercial planning in the building of new towns:

New Towns mean new plans and different physical arrangements, with green belts and inner block parks, neighborhoods and superblocks, community centres, and the separation of roads and walks. These modern urban forms are bound to replace the obsolete, socially repellent, barren real estate gamblers' checkerboard. But communities fitted to the life of today — and fit to live in now — will neither come into being nor have any lasting existence merely because the plan is modern. Creating New Towns implies more than designing new forms. A new technique is required, and this will involve a different procedure all the way from raw land to the neighborhood built and lived in.45

Stein was prominent in the planning movement. Following the formation of the Regional Planning Association of America in 1923, he was successful, as President of the Association, in putting his ideas into circulation. His ideas were instrumental in the decision to create the greenbelt towns by the Resettlement Administration in 1934.46

The concepts of Howard, through Stein's influence, may be easily traced from Sunnyside Gardens, New York, begun in 1922, through Radburn, New Jersey, the three greenbelt towns in the 1930's under the auspices of

44 ADVISORY COMM’N REPORT, supra note 1, at 70; C. STEIN, TOWARD NEW TOWNS FOR AMERICA 219 (1966) [hereinafter cited as STEIN].
45 STEIN, supra note 44, at 219.
46 Lewis Mumford, in his introduction to STEIN, supra note 44, stated:
Finally, had it not been for the ideas that the Regional Planning Association of America, under Stein's presidency, had put into circulation during the twenties, the Greenbelt Towns undertaken by the Resettlement Administration in 1934 would have been inconceivable, and the germs of an American New Towns policy... would not have been implanted in Washington.
47 Sunnyside Gardens was built by Stein and Henry Wright in the Borough of Queens, New York. This development was designed to house low income families. It was to be the social, economic and architectural laboratory needed prior to the building of the “Garden City” envisioned by Stein. Many of the social and architectural approaches now being used in the creation of new towns appeared for the first time in the planning and construction of Sunnyside Gardens, albeit in embryonic form. Sunnyside was an apparent success until the Depression which forced many mortgage foreclosures.

Radburn was begun four years after Sunnyside Gardens. The “Radburn Idea” of how to live in spite of the automobile was the first utilization of several important planning concepts: Specialized roads were planned and built for a single use; houses faced the green and common areas; parks were planned as the backbone of the neighborhood. As with Sunnyside Gardens, the Depression severely affected Radburn's projected growth. As a result, Radburn deteriorated into a bedroom suburb for New York commuters, as a balanced economic community failed to materialize.
New towns and communities that have been built in the United States since World War II may be divided into two groups: (1) Those which were begun shortly after the end of the war for the purpose of relieving the housing shortages that then existed, and (2) the spate of new towns and communities now being built and which were begun in the late 1950's and early 1960's and which increasingly have been started since that time.

The real impetus in the building of new towns and communities, however, has come since 1960. It is reputed that over 100 such communities are being built or are on the drawing boards. These include, most notably, Lake Havasu, Arizona; Irvine Ranch, Mission Viejo, and Foster City, California; Reston, Virginia, and Columbia, Maryland. In the report of the

48 Although originally eight towns were approved, appropriations materialized for only five towns. Only three of these five towns were built: Greendale, Wisconsin, Greenbelt, Maryland, and Greenhills, Ohio. The towns were to demonstrate the viability of the garden city concept of Ebenezer Howard and also incorporate the planning elements of the "Radburn Idea" and neighboring unit planning. See note 47 supra. Cooperative ownership, which was unsuccessfully attempted at Sunnyside Gardens, proved successful in the ownership of shopping centers used in the greenbelt towns.

49 See text accompanying notes 52-63 infra.

50 Located in an arid area of western Arizona, upon the shores of Lake Havasu, Lake Havasu City is the residential outgrowth of an industrial complex built by McCulloch Enterprises. The presence of industry prior to the development of the town has greatly contributed to the success of Lake Havasu City. It is an industry-dominated and developed town, backed with sufficient financial strength for the long pull, relatively unburdened by financial recession, in an area of fortuitous location vis-à-vis existing metropolitan centers and natural resources, and unencumbered with a proliferation of local governmental entities.

51 The master plan for the eleven communities comprising Irvine Ranch was drawn up in 1960. Since it was sufficiently close to Los Angeles, a conscious effort was made not to attempt to create a self-sufficient town similar to the towns created under the British new town program. The Irvine Ranch communities are not autonomous political entities, although portions of the development have been annexed to existing incorporated communities such as Newport Beach and Tustin. The Irvine Company, which developed the community, has been able to attract, by far, more commerce and industry than any of the other American new towns. This is primarily due to the fact that the Irvine Company was successful in attracting the University of California to establish a campus on the ranch.

In terms of location, size and financial structure, Mission Viejo duplicates the new communities on the Irvine Ranch. The project differs, however, from Irvine Ranch in that tracts are sold to the builders and leaseholds are not used. Continuity of planning is maintained by use of a general development plan, restrictive covenants with builders and purchasers, the retention of ownership of commercial and non-residential developments, and through county zoning ordinances.

Foster City, created by the reclamation of land from San Francisco Bay, was begun in the early 1960's. The basic planning elements are very similar to those of Mission Viejo and the Irvine Ranch communities, containing neighborhood units and shopping areas built around a town center, and also including commercial and industrial areas, recreational areas, neighborhood parks, and an arterial street system for heavy traffic. Like Mission Viejo, few industrial firms have been attracted to the new town. Growth of industry will probably occur, but slowly.
Advisory Commission on Intergovernmental Relations dealing with policies for future growth of urban and rural America, a list of 52 such communities is presented. It is obviously impossible to make a study of all these communities; therefore, the communities at Columbia, Maryland and Reston, Virginia will be discussed and contrasted to reflect the differing experiences, both successful and unsuccessful, which have characterized the construction of new towns in the United States.

A. Columbia, Maryland

Columbia, Maryland, is one of the brightest of the new towns being built in this country. Begun in October, 1963, in Howard County, Maryland, between Baltimore and Washington, D.C., ultimately to house 100,000 people, it is not only one of the best conceived and planned of the new communities, it appears that it will be a financial success as well.

The community is the brainchild of James W. Rouse, the president of The Rouse Company, a mortgage banking firm that has had considerable experience in the construction of community facilities. The purpose of Columbia is twofold: first, to absorb metropolitan population growth and overspill and at the same time to preserve parts of the countryside, and second, to create an environment to serve man, his family and his institutions, to enhance the quality of life rather than to detract from it. It was the desire of Mr. Rouse and his associates to create a totally planned city that would eliminate urban sprawl and create the values he feels are missing in urban growth today. These major aims or objectives are:

1. To build a real city — not just a better suburb, but a complete new city.
2. To respect the land.
3. To provide the best possible environment for the growth of people.
4. To make a profit.

The fourth objective is no less important than the other three, for the developers felt that it was necessary not only to produce a good environment as the right product in city building, but also to produce an outstanding profit. Anything less, even moderate success, it is felt, will be a blow to hopes for building a better urban growth.

52 This study of Columbia, Maryland and Reston, Virginia is based upon literature discussing the venture and materials received from each of the developers. This included a questionnaire which was sent to and received from the developers, which covered general aspects of planning, creation, financing, and control of the communities.
54 Address by James Rouse, University of Puerto Rico, 1967.
In order to achieve these objectives, Rouse formed a "work group" from the behavioral sciences and other disciplines to cover every facet of community building and community life. The original work group consisted of fourteen men and women who met weekly for six months, for exploratory and preliminary studies. The entire group concentrated their efforts for over five years in the planning of Columbia. In Rouse's words, "We built a hypothetical model. We determined how many jobs it took to support a population of 100,000. How many primary jobs. How many servicing or dependent jobs. How many schools. How many churches. How much open space land it would take to do this whole job and provide for a population of 100,000 people. Well, we concluded that it would take 14,000 acres and that it would take about $20,000,000 to assemble the land."  

Columbia will provide employment for 30,000 people, housing for 31,000 families, and will include 70 schools, 50 churches, a college, a hospital, a library system, 3,500 acres of open space, 26 miles of riding trails, lakes, parks and recreation areas. The immensity of the project has necessitated the creation of a separate division of The Rouse Company: The Columbia Division.

The site for Columbia is a 15,000-acre tract located in the Baltimore-Washington corridor, a tract sufficiently large to encompass the objectives of the developers and which would allow a spread of the costs of permanent development improvements to each lot of only a moderate amount. The land was acquired through agents, without disclosure of their principal, at the average cost of $1,500 per acre, although up to $75,000 an acre was paid for land containing strip commercial improvements along the Columbia Pike, U.S. 29. These were removed in order to eliminate the beginnings of commercial blight and to create a landscaped parkway for the five miles that it passes through the new community.

At the present time some 1.7 million people live within the political limits of Washington and Baltimore and an additional 2.7 million live in the suburban areas surrounding the cities. It is envisioned that within the next four years, the target date for completion of Columbia, that an additional quarter million people will be added to the inter-city corridor. Columbia lies within the area of this anticipated growth.

The basic planning of Columbia is to re-create the town meeting tradition and to allow young people to learn from the dynamics of growth and change to which they will be exposed in the Columbia community. To

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55 Address by James Rouse, National Ass'n of Mutual Savings Bank's Conference, 1966 [hereinafter cited as Rouse Address].
57 Rouse Address, supra note 55.
achieve this result Columbia is designed as a cluster of nine communities around a commercial core. The center core of Columbia is the Galleria, the equivalent of a large regional center providing both commercial and social activities for the entire community. Included will be art and music schools, theaters, museums and galleries. Clustered and surrounding the downtown of the community will be nine towns or villages, each to contain 10,000 to 12,000 people, each differing from the other in character. Each village will include a village square or green, junior and senior high schools, stores necessary for day-to-day needs, and community buildings, as well as recreational facilities, a medical office building, a branch library and the village hall.

In turn, the nine villages will be broken down into 36 neighborhoods, four to six neighborhoods of 1,500 to 2,000 people to comprise each village. Interspersed between the villages and neighborhoods is 3,200 acres of open land and greenbelts. Such land will include five lakes, four golf courses, riding trails, parks, playing fields, pathways, streams, stream valleys and wooded areas. Columbia appears to be the ultimate development of the basic concepts of Stein in Radburn and of Ebenezer Howard's Town and Country magnets.

The actual construction of the community is split between The Rouse Company and private builders. The Rouse Company will build the retail centers, the village and neighborhood shopping centers and the downtown Columbia Mall, some rental apartments, office buildings and industrial facilities. The balance of the community is to be built by private speculative builders and industry. Interestingly, one of the major builders is Levitt and Sons, Inc., the builders of the Levittowns, towns of monotony. Houses are to be built in a variety of sizes on lots that range one-quarter to five acres. Columbia will also include townhouses and apartments. It is planned that low cost homes will be offered under the FHA 221(d) (3) program by which FHA will insure long-term (40 year) mortgages at below market rates (currently fixed at 3%).

Planning control is maintained by zoning, deed restrictions and covenants, and control of architectural design by the developer. The control functions now performed by the developer will later be handled by the Columbia Association, which by 1980 will be entirely in the hands of the residents.

The zoning used is an expanded concept of planned unit development. A New Town District was created for Columbia. The zoning was created

for development of the new community as an entirety and is embodied in the New Town Zoning Code of Howard County, the governmental unit with jurisdiction over zoning in Columbia.\textsuperscript{59} Columbia therefore differs from other new communities that have been discussed, as here comprehensive zoning, in addition to contractual controls, has been used as a planning and planning control tool to a much greater extent than in the other communities.

Columbia is an unincorporated community, and it is not anticipated that it will be incorporated. The dominant political jurisdiction is and will be Howard County. In lieu of a community-governing body, many of such functions will be carried on by the Columbia Association.\textsuperscript{60} The Association will provide the residents a voice in the affairs of the community and will also provide for the care, upkeep and operation of many of the facilities of the community. The Association is a non-profit corporation financed by a tax levy upon all taxable property in the community, with a maximum rate of 75 cents per $100 valuation.

The Association will coordinate its activities with those of Howard County, which through its unified county government will provide water, sewers, street maintenance and snow removal, police protection, court system, schools, etc. The Association will maintain parks, pools, courts, lakes and community buildings and also operate and maintain preschool and child-care centers, landscaping, bus service, etc.

The Association is governed by the Board of Directors, which technically are the only members of the Association. The present seven members of the Board are representatives of the developer, whose offices will be phased out in annual stages from 1976 through 1980, the target date of completion of Columbia. It is anticipated that each village will have a separate village association. Each owner of land in a village is by right a member of his local village association. Such association has the right to provide services in addition to those furnished by the Columbia Association, which will have to be financed separately as they will not be covered by the annual levy.

Seed money for the development came from traditional institutional lenders. Mr. Rouse was able to sell Connecticut General Life Insurance Company on making the largest single investment in their history in providing $18,000,000 (later raised to $23,500,000) for land acquisition. The gambit of Mr. Rouse was that the company could hardly lose if the end product of the loan was merely the acquisition of the 15,000 acres at a price


\textsuperscript{60}Id.
of $1,500 per acre; in his words "they could only get rich slowly." The land obtained constituted nearly 10 percent of Howard County. Land acquisition extended over an eighteen month period. A number of corporations were set up to aid in land acquisition, which consisted of 175 separate transactions.

The industrial and economic base for the community is found not only in the industries being located in the two industrial parks established in Columbia, but also in the vast accumulation of industry, educational facilities, technology and governmental facilities located in nearby Washington and Baltimore and in the corridor in which Columbia is located.

Columbia is one of the newest and most successful of the new towns, also one of the most comprehensive in planning and execution. However, the developers feel that the Federal government must provide appropriate loans to enable local governmental units to establish land banks in order that land may be aggregated in sufficiently large units as to allow the planning and building of complete communities such as Columbia, and that legislation should be enacted to aid developers with problems of cash flow during the development period. Columbia is another example that a private developer may construct a new town, in every sense of the word, within the framework of existing governmental entities and financial institutions. The question of whether the experience at Columbia is repeatable in other communities and in other circumstances becomes pertinent upon the consideration of another new town of great promise, but one which appears to have fallen on hard times: Reston, Virginia.

Reston, Virginia

Reston is one of two new towns in the United States that are in the most advanced stages of construction, the other being Columbia. In fact, Reston was started a year before Columbia. In some respects they may be called twin new towns, as they reflect the same general objectives and are located relatively close to each other, as new towns go. Columbia is located in the northerly Washington-Baltimore corridor, and Reston some 18 miles to the west, between Washington, D.C., and the Dulles International Airport. It is interesting to compare these new communities, each beginning with many of the same goals, of comparable size, but with Columbia apparently doing well and Reston having been taken over by one of its major investors in an effort to salvage the town.

61 Phillips, Reston, The Search for Village Living in the City of Tomorrow, AMERICAN HOME, Mar. 1965, at 34; Simon, Planning a New Town—Reston, SELECTED PAPERS FROM THE ASPO NATIONAL PLANNING CONFERENCE 150 (1964) [hereinafter cited as SELECTED PAPERS].
Reston is located on 6,800 acres of land, straddling the Washington-Dulles airport road. It is designed for an ultimate population of in excess of 75,000. It was the philosophy of Robert E. Simon, Jr., the developer of Reston (the first three letters in the name Reston being the initials of the developer), to provide for freer forms of recreation and human activities, to create a mixture and balance of income groups, to get people closer to the outdoors, to provide a complex and variegated tone to life, not merely monotonous suburbia.

As compared to the objective of Mr. Rouse, the developer of Columbia, it can be seen Mr. Simon's objectives are somewhat more aesthetic. He has stated that: "If his (the planner's and developer's) interest is genuine and in depth, it will give him the strength to resist the many pressures from professionals and technicians which attempt to infringe on his order of priorities. If he is a dilettante, so much the better — he will have a broad range of interests." 62

The master plan developed for Reston departed from the standard planning concept of a central core of high density surrounded by successive lower and lower densities. The plan provides for a "high-density sinew" running from north to south through most of the tract. In addition, it was decided to utilize a mixed land use, i.e., mixing of homes, which would include detached housing, townhouses and apartments, of differing economic levels, with offices, stores, community facilities and recreation. To allow for extensive open space, clusters of townhouses and apartments were planned. The various parts of Reston would include mixing of different densities: High density (60 people per acre), medium density (14 per acre), and low density (3.8 per acre). By use of the open space the overall density is planned at an average of 13 people per residential acre. 63

Control and regulation of land use in Reston is accomplished by a variety of means: 64

1. Restrictions and covenants.
2. Zoning by the County of Fairfax.
3. Home Owner's Associations.
4. Cluster Associations.
5. Architectural review board.

Restrictions have been placed upon the property by deeds of dedication executed by the Palindrome Corporations (succeeded by Reston, Va.,

62 SELECTED PAPERS, supra note 61, at 150-51.
64 Id.
Inc.) and are incorporated by reference into conveyances of property to purchasers. The restrictions are comprehensive and are broken down into general protective covenants and restrictions, residential property protective covenants and restrictions, and commercial property protective covenants and restrictions.

The most important aspect of Reston is its financial collapse. The underlying land was purchased for $12,800,000, consisting of $800,000 cash and $12,000,000 in mortgages. Building began in 1963. In 1964 Reston was within five days of shutting down construction but was saved by the $15,000,000 investment of Gulf. Two years later John Hancock was induced to invest an additional $20,000,000. In all, $48,500,000 were invested in the community. Yet four years from the beginning, and two years from start of construction, by June 1965, only 180 units had been put on the market and of these only 50 had sold. By Fall 1967, Reston had sold only 575 homes, containing 2,700 residents, with $30,000,000 in initial construction costs, and carried a $45,000,000 indebtedness with $2,500,000 in annual interest payments. Annual sales averaged about 360 units with 500 to 1,000 units necessary to meet annual carrying charges.

What went wrong at Reston? Obviously Reston was caught in a cash squeeze. Insufficient cash flow was generated to accommodate the interest payments on the underlying financing. A number of factors may be considered. In the first instance was the aesthetic and sophisticated tone of the community, and the tight planning down to the last community activity. The architectural concepts and the use of cluster housing, mostly in the nature of townhouses and apartments, were probably sufficiently different from the environment encountered and anticipated by the average purchaser that after the cream was skimmed, relatively few people were attracted. This was intensified by the fact that the cost of the amenities available in Reston increased the housing cost on an average of $3,000 per unit.

Also due some weight is the fact that Reston is not situated as advantageously as is Columbia, since Reston is 18 miles west of Washington and the super highway that goes from Washington to Dulles Airport has no entrance nor exit ramps into, or out of, Reston. Industry has not been attracted to Reston in any great quantities, although Gulf-Reston has been somewhat more successful in this regard.

Basically then, the reason for the demise of Reston was the cash squeeze caused by the combination of slow acceptance and sales of the units being offered, the tight money market, and large amounts of land tied up in non-income producing activities but bearing high interest charges. In
retrospect, the effect was the same as the depression which caused the financial disasters at Sunnyside and Radburn, although not as severe.

The experience at Reston again raises the question to what extent may a new community, that is not dominated by an entity with strong financial assets, remain economically viable without the intervention and help of the state or federal government. Will the market bear the increased cost of such communities? As to Columbia the answer was yes, as to Reston the answer was no.

IV. FORMAT FOR NEW TOWNS: UNITED STATES

New towns may be adapted for purposes other than providing housing: Amenities can be installed where none existed before; the creation of a new community may be used as an economic stimulant in some areas; a new community may act as a vitalizing force for planning and development. However, the most immediate use is to accommodate the growing population in the United States.

Typically, new towns and communities may be placed in three general classes: First, autonomous, self-sufficient communities essentially not tied into a major metropolitan region, or at least not to the extent that the new community becomes substantially dependent upon such areas. Park Forest, Illinois, when built, and Lake Havasu City, Arizona, may be so classified. Second, the semi-autonomous community: it would seem that Columbia and Reston may be classified as semi-autonomous communities, as neither has a self-dependent economic base. The third type of community is heteronomous and serves to relieve population pressures of large metropolitan areas essentially by incremental expansion. Examples of this type are found in Irvine Ranch, Mission Viejo, and Foster City.

Not only do new towns greatly differ in purposes, they also differ as to the nature of the entrepreneur:

1. Real estate builders and contractors.
2. Large land owners.
3. National corporations with capital to invest.

Park Forest, begun in 1947, was the first large-scale planned community developed without a government subsidy. Reasoning that an almost instant population of some size had to be attracted to form a financial base, the developers gave top priority to construction of rental units. Following completion of the rental units, houses began to be constructed and sold.

Although initially a commuter town, land has been set aside for an industrial park and some industry has been attracted, with a view that eventually a balanced community will emerge. Park Forest has demonstrated that it is possible to create a more or less balanced, planned community by private developers within the existing legal and political structures.
Industrial concerns essentially providing housing for plant expansion.

The developers of Reston, Columbia, Park Forest, and Forest City fall roughly into the first group. Irvine Ranch and Mission Viejo are being developed by ranching corporations with large land holdings. Litton Industries, Goodyear, The Aluminum Company of America, and the General Electric Company are examples of the third group. This group may also contain companies such as Gulf Oil Company, and some mortgage bankers and insurance companies who are furnishing capital with an opportunity to acquire an equity interest in the new community.

New towns and communities in the United States may be said to be similar in formation to the familiar remedy for headaches in that they contain not just one, but a combination of ingredients. They need an application of unstereotyped approaches and techniques to fit the variety of circumstances encountered in this country. Unfortunately, there is no good headache remedy for new town problems readily available.

A. Site Acquisition and Clearing

An immediate and perhaps critical procedure facing a community builder is that of land acquisition. In the United States, there exists no overall framework within which determinations can be made as to optimum location of new communities. This is true both as to self-contained communities and communities to be located adjacent to, and being in a large degree dependent upon, an existing metropolitan area. Decisions concerning the location of new community sites are generally independent of the planning functions, as they exist today.

Where a developer desires to construct a new community, his choice of site location will be determined by a combination of factors: topography, access to urban areas, availability of transportation for business and industry, supportive industry, utility services, ability of the new community to impress an area with a new character, nature of local planning controls, and other factors. This process will lead to a consideration of alternative sites. Unknown factors in the equation become an estimate of land costs and of the ability of the developer to secure a block of land sufficiently free of encumbrances so as not to distort the overall plan. A rudimentary title examination may be sufficient to determine the existence and nature of encumbrances.
of encumbrances; however, the actual land costs and the ability of the developer to aggregate the land will be unknown until attempted. This may prove disastrous in the customary case where financing commitments have been obtained conditioned upon a maximum land acquisition cost figure and perhaps a minimum aggregate acreage figure. The basic problems facing the developer concerning land acquisition in the United States, therefore, are twofold: First, the ability of the developer to aggregate the land, and, second, his ability to control costs.67

Where the land is owned by the developer at the time of the decision to construct a new community, such as in the case of Irvine Ranch and Mission Viejo, obviously the problems incident to land acquisition are not present. Normally, however, the developer must aggregate the land out of many small pieces. The problem is essentially analogous to that of blocking acreage by petroleum companies. In each instance anonymity is essential for success. Petroleum companies generally use agents, nicknamed “lease-hounds”, to purchase leases in individual names and assign them to the principal company. In the case of Columbia, Maryland, a number of separate corporations were formed to handle land acquisition and the more than 175 separate transactions entered into. Presently, no powers of eminent domain are available to the private developer as they are under the British program or were to the Federal government in construction of the Greenbelt towns. A private developer could be substantially frustrated by the hold-out owner of an essential tract of land who desired not to sell, but to hold the land for speculative purposes.

Akin to the initial procurement of the development site is the situation where the developer has been successful in acquiring sufficient land to begin the project, but due to lack of financing has been unable to acquire all of the acreage needed, i.e., where the new community must expand by increments. The effect of a successful beginning of a new community will many times be to increase the determination of owners of adjacent lands not to sell except at an inflated price, or perhaps, exercising their God-given right of American individualism, not to sell at all. In this situation, the developer may be as fully unable to acquire the necessary acreage as he is to prevent the initial hold-out, and he has completely lost whatever ability he had to control price, in the initial purchase, by suppressing knowledge of the nature of the enterprise. Lack of price control, of course, will affect the large corporation with excess funds to invest much less severely than the developer-builder who must rely primarily upon third party financing.

67 This uncertainty does not exist under the British program where the Ministry may issue Designation Orders describing the entire tract desired and where subsequently rising cost values are adjusted to the market value existing at the time of designation.
To foster successful new communities, a prospective developer must be able to acquire adequate areas of land competitively priced to ensure financial success for the town. Due to the great amount of capital investment necessary without return for long periods of time, it may be that the developer of a new community should be able to acquire land below the average cost in the area to enable him to maintain a competitive position. Unfortunately, in areas where most communities will probably be built — near existing urban areas — land costs have reflected the possibility of future urban growth. Such sharp rise in market value may exist beyond 75 to 100 miles from a large urban area.

It is suggested that solutions to the dual problems of land aggregation and price control may be evolved from a study of the following alternatives:

(1) The use of option agreements by the private developer to stabilize land outside of the initial area, when the developer is unable to acquire sufficient acreage at the outset. It is recognized that this is a customary approach today; however, it is a weak alternative as normal owners do not desire to execute options for excessive periods of time. In the case of a new community, option periods could easily run for a period of ten to twelve years. The option agreement in customary form would no doubt prove unacceptable as a device for stabilizing large areas of land for later development purposes.

Another form of option might be an option upon the "urban development rights" of a tract of land to be exercised within a stated period of time. In its totality, the option would be upon the fee. However, the instrument could convey "urban development rights" for a determined sum, with the option to acquire the remainder of the fee within a time limit adaptable to new community construction. If the fee were not acquired within the stated time, the "urban development rights" would revert to the land-owner. The rights conveyed would be in the nature of an easement allowing entry and use for the development of the land. Although the optionee may be empowered to so enter and use the land, in actuality it is conceived that the instrument be used only as an acquisition and price stabilization device. Doubtless few, if any, institutions could be found to advance funds for development of such lands, and the land-owner would be greatly perturbed by the developer cutting up his land prior to actual acquisition without

It can be argued that if easements allowing land were conveyed the effect would be to convey the entire fee for a term. If classified as lease of the fee it would be necessary to include contractual language relieving the optionee from liability for waste. On the other hand, it may be viewed a fee subject to a special limitation or perhaps a condition subsequent, depending on the form of the instrument, in which case relief against waste would not be necessary.
compensation for injury to income. In the event of failure to acquire the land, the developer would become a volunteer as to installed improvements.

The device might make a long-term option more palatable to the landowner as a partial substantial payment would be made for such "rights", with the remaining acquisition price remaining stable for the stated period of time. Although partial disclosure of the nature of the project would be necessary, it would be anticipated that the resultant price rise at the outset would be much less than could be expected at a future date after a portion of the new town became a reality. The frankness of partial disclosure may have an effect of greater amicability upon the people to be dealt with. On the other hand, in the event of failure to obtain an option, little would be lost, since a later attempt must be made after partial construction in any event.

The successful use of long-term option on development rights would pose a question whether an attempt would be made by the local tax assessor to tax the speculative value of the land subject to the option, and also upon whom the burden of the increased tax might fall. Increased taxation upon the landowner equal to, or greater than, the consideration received for the option would make the device unacceptable to him. On the other hand, a successful attempt to tax the value of the combined option rights could greatly increase the land holding cost of the developer.

(2) A structure might be provided within which the location of the land acquired would satisfy not only the aims of the developer, but also those of either the local, regional, state or Federal planning agencies. In the event that the project was so approved, in order to indirectly control price so as to make the land competitive within the area to be developed, direct subsidies could be made to the developer or credits allowed against the infrastructure for the community. On the state and local level, severe questions of constitutionality may exist as to the ability to provide direct subsidy payments to the developer, although credits against, or increased grant provisions under Federal programs, such as are administered by HUD, would seem to be feasible.

(3) A variation of the second approach would be to place in governmental units or agencies (through the use of public development agencies, land banks, etc.) the ability to acquire land under eminent domain powers for new community creation. Such land would in turn be sold for development in a manner similar to that used in the Urban Renewal Program. Again problems of legality are presented concerning the question of whether the purchase for and resale to a particular private developer can be justified as to public use. It is the writer's preliminary opinion that if properly con-
ceived, such programs would be upheld. The overall development plan would in all probability be subjected to standards of scope and nature similar to, but probably more extensive than, the requirements of Title VII of the Housing and Urban Development Act of 1970.69 A limited program of acquisition might be conceived to apply only to the "holdout" owner, but to be truly effective such public acquisition program should cover the land necessary for development of the total community.

(4) Somewhat similar to (3) would be an extra-territorial extension of the powers of eminent domain for large municipalities to enable the acquisition of land for the creation of semi-autonomous satellite communities by private developers. Such communities would in effect be annexed to the core city and would prevent the loss of tax base to migrating residents outside of the municipal limits. To accomplish this would require drastic changes in state laws and would also involve substantial constitutional questions as to pre-existing rights.

Brief mention should be made of an additional problem confronting the developer in addition to those above discussed. This is the control of the developer over the land acquired. Such land may be subject to many pre-existing rights which will affect the future community. These could include such matters as existing roads and highways, public utility services, and graveyards. Although the British Legislation contains provisions which may be used effectively to clear the land of such pre-existing encumbrances, no such powers exist in this country and it is not clear that such powers could be economically effectuated. It would seem that the scope of the police power is sufficiently broad to compel (for the construction of large autonomous or semi-autonomous communities) relocation of public utility facilities and the like, as well as roads and highways, under proper state statutes. It may be questionable whether the entire cost of such relocation should be borne by the owners of the encumbrance to be moved. However, such relocation may be quite expensive, and if borne in part by the developer, may prove to be unduly burdensome. This again points to serious consideration of some type of public-private developing agency, whereby the costs may be spread over a wider base. The question is merely raised at the present time and no solution is suggested.

B. Financing

Second to site acquisition as an immediate problem, and far exceeding it in the long run, is the availability of adequate financing for the building of new towns and communities. Presently, the new towns being built in the

United States are being financed for site acquisition and development by private investors. As the costs of building a new community are extremely large, financing has had to be handled upon a participation basis by combinations of investors. The pattern of investment is similar to the customary financing forms used in subdivision building, but in an expanded format.

Investment commitments of private institutions have not been formulated to handle the problem of extremely high initial costs of the new town developer with a long-time gap before an expected return of only a modest amount. It has been estimated by the Community Systems Development Division of the General Electric Company\(^{70}\) that large initial investments will be necessary for a period of some seven years, which will not be recovered until the twelfth or thirteenth year, and profits being realized only after the thirteenth year. The total estimated time for risk bearing for the developer is twenty years.\(^{71}\)

It is instructive to note that General Electric was quite anxious to enter the field of new community development. The Community Systems Development Division was formed for the purpose of assessing the advisability of so investing. After a study continuing for several years, concluding that land may not be acquired at competitive prices and noting the burden of financing, it was stated: "After carefully analyzing more than thirty potential sites, General Electric Company has found only three or four opportunities which were attractive, and then marginally; our discouragement is almost complete."\(^{72}\)

A cash squeeze may not only be caused by the magnitude of financing charges for site acquisition and development, but also by anticipated land appreciation where the developer also owns a substantial amount of adjacent land. This has occurred in its severest form to the Irvine Ranch, where farming land has been taxed on anticipated speculative values for community development. This latter problem has been met in a few states such as California by use of a preferential farmland assessment,\(^{73}\) whereby such land would be held back from early development in return for a lower assessment.


\(^{71}\) The take-over of Reston, Virginia by Gulf was at least in part attributable to the impatience of the investor to wait until profits were produced. This was aggravated, of course, by concern over whether Simon could meet current debt charges.

\(^{72}\) See note 70 and accompanying text \textit{supra}.

\(^{73}\) Preferential farmland tax assessments have been used in a variety of forms for many years. Such preferential tax treatment may involve an arbitrary lower tax rate for a limited period, a use-value rather than market value assessment, deferred taxes, tax rollback to the owner coupled with rebates to the taxing authority by the state. Such programs have been varied and have met with mixed success. In Maryland a use-value assessment on
A further area of financial concern to the developer is that of supplying community facilities and amenities. The pattern for the construction of such facilities seems to vary greatly among developers. At least three variations have been observed:

(1) By the developer.
(2) By a governmental unit with larger jurisdiction than the area of the proposed new community, as the county, or an annexing entity.
(3) By special single and multiple use districts.
(4) A fourth category might be included, that of the new town or community which is an incorporated governmental unit. However, it appears that few of the new towns to be built in this country under the existing framework will be incorporated at an early stage in their development.4

Where the developer has undertaken to provide the basic amenities for a new community, his costs will increase his initial investment burden, as such facilities must be installed on a rather extensive basis, both as to area and capacity, at a time when little or no income can be anticipated.

Commonly, installation of such facilities has been done by existing local authorities. These have been either County Districts or annexing municipalities. In either case a rather severe problem may occur, by burdening existing residents with costs of facilities they do not enjoy. A similar situation is found as to cost sharing for community amenities between the development corporations and local authorities under the British program. The burden of taxation for benefits not received has been alleviated in California by the provision for special county taxing areas, which in effect include only the property being benefited within the district. Although this may serve to insulate the remainder of the area under the jurisdiction of the particular governmental unit from the burden of increased taxes, it would seem that lack of tax base within the special district may weigh heavily against the ability to raise sufficient funds at the outset.

Somewhat similar to the special county taxing area (or similar provision farmland has not appreciably prevented farmland being converted into urban development. See generally POLICY IMPLICATIONS OF THE REAL PROPERTY TAX ch. 1 (1972) (Institute for Environmental Studies, Univ. of Pa.); INTERNATIONAL ASS’N OF ASSESSING OFFICERS, USE-VALUE FARMLAND ASSESSMENTS THEORY, PRACTICE AND IMPACT (1974).

Early incorporation of new communities located nearby metropolitan areas could prove harmful to overall planning as it would tend to fragment areas into a number of governmental units. Incorporation of new communities should be carefully considered as to possible disruptive influence of development in the area. A prime example of the blocking effects of such incorporation of communities is evident in the Houston area.
for municipal annexation) is the application of the special use districts. The creation of single purpose districts with the power to tax and issue bonds for facility construction was first utilized to any great extent by the developers of the Levittowns. The use has been expanded, notably in Arizona and California, to the creation of special multiple use districts which have the power to levy ad valorem taxes and issue bonds. In the case of Lake Havasu City and Foster City, such multiple use districts have acted as a substitute for an incorporated municipal government for the new communities. In California such districts are created pursuant to state legislation. Again the problem is possible lack of tax base upon which to issue bonds.

It appears then, that problems of providing for community facilities and amenities, whether by the developer or a local governmental unit is one of financial sufficiency. In the case of the developer, it is a question of the developer's ability to carry an increased investment in terms of both carrying charges and security for the investment. In the case of the governmental unit, the existence of a sufficient tax base to fund such improvements creates a similar problem.

Financial aid exists for installation of such facilities by local governmental units from both the federal and state governments, and for the developer since the passage of the Urban Growth and New Communities Development Act. Extensive aid is offered to local public bodies under Section 701 of the Housing Act of 1954; the Housing Amendments of 1955; Title VII of the Housing Act of 1961; Section 703 of the Housing and Urban Development Act of 1965; and, the Water Supply Act of 1958. Under these several acts, grants and other assistance are offered for the planning and construction of public works and facilities, development of open space, and neighborhood facilities for health, recreational, social or similar community services. In addition, the Urban Growth and New Communities Development Act of 1970 also provides aid to local public authorities for projects under Section 4519 of the Act to encourage localities to utilize some thirteen existing federal aid programs listed in the Act. To accomplish this result, the Secretary is authorized to make supplemental grants to cover an additional 20 percent of actual construction costs.

81 42 U.S.C. §4519(c).
82 Id. §4519(a).
It would appear that the real problem as to provision for aid to local authorities for construction of public facilities is that such programs are spread across the face of the federal statutes as well as constituting a heterogeneous body of state law. No coordination of programs has been attempted. An immense amount of inefficiency, duplication and slippage must normally occur in the administration of these programs. It is certain that the federal and state agencies that administer these programs must have many diverse concepts as to the purposes to be accomplished. For efficient new community development, consolidation and coordination of these acts must be accomplished. This would also necessitate an examination of the several enactments to determine to what extent they could be made to specifically aid new communities and new towns.

C. The Urban Growth and New Communities Development Act of 1970

Title IV of the Housing and Urban Development Act of 1968, known as the New Communities Act, was envisioned as an aid to the developer who had heretofore been plagued by a cash squeeze. The legislation was in answer to the great amount of discussion and need for relief, and to a plea by President Johnson for such legislation. The basic device of the Act is that of a federal guarantee of cash flow debentures to be issued by private developers in an effort to tap the private bond market. Repayment would be geared to actual cash flow, and would eliminate the necessity for repayment until a positive cash flow was experienced.

However, as is the case with other federal "carrots", a close reading of the Act and the statement of Initial Policies and Procedures by HUD discloses that to be eligible for such bond guarantees, the applicant must conform to various requirements which are deemed to be desirable social policies in the creation of the new communities. The purposes of the Act are set forth in full:

It is the purpose of this chapter, by facilitating the enlistment of private capital in new community development, to encourage the development of new communities that

(1) contribute to the general betterment of living conditions through the improved quality of community development made possible by a consistent design for the provision of homes, commercial and industrial facilities, public and community facilities, and open spaces;

(2) make substantial contributions to the sound and economic growth of the areas in which they are located;

(3) provide needed additions to the general housing supply;

(4) provide opportunities for innovation in housing and community development technology and in land use planning;

(5) enlarge housing and employment opportunities by increasing the range of housing choice and providing new investment opportunities for industry and commerce;

(6) encourage the maintenance and growth of a diversified local home-building industry; and,

(7) include, to the greatest extent feasible, the employment of new and improved technology, techniques, materials, and methods in housing construction, rehabilitation, and maintenance under programs administered by the Department of Housing and Urban Development with a view to reducing the cost of such construction, rehabilitation, and maintenance, and stimulating the increased and sustained production of housing under such programs. 64

The obligations to be guaranteed will be for the purpose of financing a program of land acquisition and development. As defined by the Act, this would include "the process of grading land, making, installing, or constructing water lines and water supply installations, sewer lines and sewage disposal installations, steam, gas, and electric lines and installations, roads, streets, curbs, gutters, sidewalks, storm drainage facilities, . . . or to provide facilities for public or common use"; 65 however, it does not include buildings or like improvements. Under the Act, the developer may have obligations guaranteed for the acquisition of land and installation of basic facilities. Additional financing will be necessary for the actual construction of the private homes, commercial building, etc. However, it is not the financing of these latter items that have been posing serious problems, as they can be financed before construction with the expectation of quick sale, as in the case of subdivision development. The limit upon obligations guaranteed to any one developer is pegged at fifty million dollars, which approximates the initial costs of both Columbia and Reston.

To qualify under the Act, the Secretary of the Department of Housing and Urban Development is charged with determining that

(1) The proposed new community
   (a) will be economically feasible, and
   (b) will contribute to orderly growth of the area.

(2) There is a practical plan for financing, development and sale, with due consideration to the public purposes of the Act.

(3) There is a sound internal development plan.

64 Id. §3901.
65 Id. §3914(a).
(4) The internal development plan is consistent with a comprehensive plan for the area.\textsuperscript{86}

The initial regulations issued by HUD, dated November 11, 1968, expand upon the purposes and the nature of eligibility determinations that will be made by the Secretary, in four general areas: Impact upon the area, internal diversification, internal planning and relationship to area planning, and housing. Of these four, the first and last invite some comment.

In considering the nature of a proposed development, it is evident that, to be eligible, the project must have substantial impact upon the area, whether or not the community is placed in a rural area or as part of an existing community. It is stated that impact is relative, and that a new community that may be too small to qualify for assistance if near a metropolitan area would be approved if placed in a rural area.\textsuperscript{87} On the other hand, it is further stated that in order to have sufficient impact upon an existing area, the new development must be such that “the combination of old and new results in a community that is demonstrably different from any that existed before.”\textsuperscript{88} It would seem that the standard was not in accord with the spirit of the Act. Further, it would seem to prevent the guarantee of obligations of developers who plan new communities near large metropolitan areas, such as Chicago, New York, Washington, Detroit and Los Angeles — the very locations where new large-scale communities are needed.

Although the regulations call for inventive use of housing within the concepts of the garden city Columbia-style towns,\textsuperscript{89} not every area of the country will support such housing. To require or give preference only to proposed communities that contain such elements would severely restrict the options open to developers to act within the circumstances of a particular area.

\textsuperscript{86} Id. §3903.

\textsuperscript{87} New Communities may be located in any kind of area—urban, urbanizing or rural. No specific minimum or maximum size, either in terms of area or population, is prescribed. Location and size will, however, be considered together in determining whether the proposal contemplates the kind of new community which is appropriate for assistance under the Act. A new community that would be too small to have an appreciable impact in or near a metropolitan area might qualify for assistance if it were located in a rural area and were at least as large as other communities in the area.

\textsuperscript{88} A new community need not be isolated or otherwise distinct from existing communities. It may involve a development which adds to an existing residential, commercial or industrial area, in which case both old and new development could be considered in determining whether a new community within the meaning of the Act would be created. In order for this to be so, however, the amount of new development must be substantial and the impact of the new development upon the existing development must also be substantial. The combination of old and new would result in a community that is demonstrably different from any that existed before, both in itself and in its probable effect upon the growth and development of the area in which it is located. Generally, a proposal which involves addition to existing development of housing alone or of a commercial or industrial site alone, will not be considered sufficient for this purpose.
Under the housing section of HUD's guideline statement, it is provided that a new community must include a range of housing that will include a substantial amount of low and moderate-income housing, and also, that if the new community is to be carried out in stages, low and moderate housing will be included in every major residential stage. In an effort to ensure that low income housing will be provided, the regulations should not handicap the developer in an attempt to maintain a sound economic basis. In virtually all of the new communities studied, it was considered economically unsound for low income housing to be provided within the initial residential housing, as return was too low. This is especially true if no assistance is given the developer in obtaining land at a competitive cost that would allow the substantial construction of low income housing. The Federal programs providing for FHA guarantee and FNMA purchase of low interest long pay-out mortgages, as well as the supplementing rental subsidy program under the National Housing Act, would seem to offer insufficient aid to low income families to buy adequate housing that a developer might be able to economically provide, with detrimental effect on the overall project. The provisions of the Housing Act of 1968 merely allow a nonprofit private entity to receive a direct federal subsidy in reduction of interest on mortgage payments allocable to a unit occupied by a lower income family. This may allow, together with rental subsidies to the tenant, the accommodation of lower income families in representative rental units; however, it does little for the providing for separate housing for such families.

A new community must have sound land use planning to qualify for assistance under the guarantee provisions. Among the elements of sound planning and good design that should be included are: adequate and attractively designed public facilities phased in sequence to meet projected growth in population; a network of accessible open space integrated into the fabric of the community in amounts adequate to protect the beauty of the site and to serve conservation and recreation need; flexible land use controls preventing flood plains and preventing incompatible land use functions; construction in areas which have good soil and are geologically stable; measures to insure high water quality standards and reduce air pollution. Other elements of sound planning would include: compact land use to increase accessibility to home, job and school; a safe and attractive street system which separates through traffic from residential neighborhoods and protects pedestrians; design and architectural controls and incentives and other actions to encourage good design; innovation in housing, planning and community facilities; well-designed and accessible commercial and industrial centers; and attention to the relationship of the community to surrounding developments.


Id. §1715(z) (1968).

See Boykin and Brincefield, The Federal New Communities Program: The Legislation, Processing and Documentation, 4 URBAN LAW, 189 (1972); DeLucia, New Communities and Small Town America, 4 URBAN LAW, 734 (1972); Gibson and Simms, New Community Development, 11 WASHBURN L.J. 227 (1972).
In January, 1971, the New Communities Act of 1968 was superceded by the Urban Growth and New Communities Development Act of 1970. The 1970 Act provides for assistance to either a private developer or to public developers in new community development programs which may result in a newly-built community or a major addition to an existing community. Such assistance is provided through (a) guarantees of bonds, debentures, notes and other obligations of developers of a principal obligation not exceeding one hundred percent, in the case of a public developer, nor eighty percent, in the case of a private developer, of the land value and cost of development, not to exceed $195,000,000 on any one project, (b) direct loans, not to exceed 15 years (nor to exceed $20,000,000 outstanding on any one project), to assist developers to make interest payments of debt incurred to finance new community developments, (c) public service grants to public developers for initial costs of public services, (d) supplementary grants to public agencies for community assistance under existing Federal programs, (e) technical and special planning assistance, and (f) authorization for new community demonstration projects.

The 1970 Act, if fully implemented, would seem to provide a stable source of funds over the long lead times necessary to physically construct a new community development. However, the 1970 Act, as the former legislation, does not deal with the very real problems of land aggregation and title clearing, nor does it attempt to deal in any way with the establishment of a sound base to allow such new communities to become economically viable.

D. Attraction of Industry

Nothing has been done since the termination of the Greenbelt program to provide enticements to industry on a planned basis for the economic sup-

94 See Appendix.
95 42 U.S.C. §4512(a).
96 Id. §4514. The original limit of $50,000,000 was increased to $195,000,000 as of July 1, 1973.
97 Id. §4515.
98 Id. §4516.
99 Id. §4519.
100 Id. §4520.
101 Id. §4521.
102 Id. §4524.
103 Section 4514(a) does provide that costs would include compensation for "the removal of liens on encumbrances" and "for the use of real property." The Act does not define the latter phrase nor contain powers to displace those presently using real property.
port of new communities. A study of the new communities reflects a catch-as-catch-can basis for capture of supportive industry. No national policies or approaches have been established in this regard. Little more has been done by the states on a planned basis. Some tools for enticement have been provided by states to be utilized by communities in attraction of industry: Tax incentives, local bonding power, loan guarantees, credit corporations that provide funds to high risk industries, etc. This is a far cry from the British program, as faulty as it may be. However, it may be concluded that government control of location of industry will not be politically acceptable in this country, even on a limited basis for new communities. What therefore is needed is a combination of coordinated programs on both a state and federal level aimed specifically at providing incentives for industry to locate within new communities. Nothing has been attempted in the nature of studies in this area in order to determine workable incentives, although it cannot be denied that successful attraction of industry is crucial to the success of semi-autonomous and autonomous communities. It seems especially surprising that efforts have been made to provide financial and planning assistance to the physical construction of new communities, and so little has been attempted to insure a stable economic base.

E. Internal Control of Development

The new towns and communities studied have applied customary controls on land use within proposed new communities:

(1) Deed restrictions and covenants.
(2) Master planning within the context of the governing jurisdictional body and subdivision regulations.
(3) Subdivision regulations.
(4) Homeowner’s and Cluster Associations.
(5) Zoning, including the increased use of planned unit development.
(6) Placing of ownership in governmental entities where the new town or community does not constitute a governmental entity.
(7) Retention of ownership in the developer.

As in other areas of new community construction, land use control has been adapted from existing legal structures. With the exception of PUD zoning, these procedures have not been particularly efficient as so used. The overriding question becomes: Who controls self-containment and development? At once, a conflict occurs as to whether control of the community should be in the hands of the developer or in the hands of the residents who live in the community and are strongly affected by these controls. No doubt exists that the developer must have sufficient control over the community.
so as to insure its orderly development within the broad scope of the conception of the community. To the greatest extent possible, this will be required by the institutions that are furnishing the funds for the project. Not only will such institutions desire to be sufficiently secured relative to the basis of overall value to investment risk, but it must also be recognized that much of the expected economic value of a new community lies in its worth as a going concern. Upon ouster of the developer due to default in relation to debt payment or to various collateral covenants concerning the development and nature of the community, the investor also requires the right to substitute itself, or its nominee, in the stead of the developer of the community.

Such power presupposes that there will be a certain loss of political representation by the residents of the new community as compared to residents of an existing municipality. Such loss of representation will be built into the community for the duration period of high risk to the developer and investor. In Reston and Columbia, the residents have technical representation through homeowner and cluster associations. However, in both instances, the developer has actual control of the organizations. A difference exists, for in the case of Columbia a diminishing of developer control would commence after a period of seven years, but in the case of Reston no such provision is made. As mentioned earlier, this lack of self-expression, not to say self-determination, has been strongly criticized.

The problem of control over the nature of the community has not proved to be severe where the land was owned primarily by a dominant corporation (such as McCulloch Corporation in the case of Lake Havasu City), nor where the land was owned by the developer and leased instead of sold (as in the case of Irvine Ranch). These examples would not, however, seem to be the typical case.

Reston, Columbia, Irvine Ranch and Mission Viejo all coordinated planning and controls pervades the entire program of new town construction was the county. Master plans were drawn up to provide for the harmonious relationship of the new town with surrounding areas. This is in sharp contrast with the experience of the Greenbelt towns which lacked such planning. In the case of new communities, the master plan serves an additional political function of “locking-in” the plan as insurance against severe changes from future administrations.

This planning procedure sharply differs from the British program where the planning is done by the Minister and the development corporation free of control by the local authorities. This difference, of course, is occasioned
by the fact that the development area of a new town in Great Britain is largely an autonomous area without restraint by local laws and authorities.

The coordination of the new community with the structure of local planning and controls pervades the entire program of new town construction in the United States, viz., road building, utility layout and design, state and county building codes, local subdivision regulations, and zoning. It has been in utilization of PUD zoning that the greatest problems have occurred. Since planned unit development combines zoning, land subdivision controls and review into a comprehensive unit generally tailored for the development of a specific community, it is not surprising that resistance has been encountered. As very few of the states have passed enabling legislation supporting PUD zoning, it is necessary to present such programs to local zoning boards and convince them (1) that it is advantageous to the community and (2) that such zoning and controls are legally supportable.

In the case of Columbia, the members of the Howard County Commission ran and were elected upon the premise that large acreage residential zoning would be maintained in the county. The developers of Columbia put before them a plan that combined land uses, density, site suitability, design, and height, and called for a mixture of uses on a density basis. Although in this instance, and in the case of Reston, the developers were able to convince the authorities that the resulting development would be beneficial, this in part resulted from the comprehensive nature of the plans presented and stature of the developers as individuals.

Customarily, zoning is highly restrictive towards new forms of community development. As a matter of fact, this is the supporting basis for much of the zoning extant today, i.e., to prevent development, or at least to prevent development that would change the status quo. More flexibility is a requisite for the internal planning and control of new communities.

In order to successfully implement a federal program for new community financing, incentives should be provided which will encourage states, where new community development is desirable, to pass the necessary enabling legislation. One suggestion to relieve the severity of local planning controls has been to create sub-jurisdictional units in the nature of neighborhood planning units, that could exercise the full panoply of planning powers as to the particular area. This would give a new town autonomous planning powers over internal planning control. However, as in the case of the British Act, some method would have to be provided to eliminate the friction that has occurred under the British system due to disruption of the local planning structure by the development corporations.
F. Relationship to Regional and Areawide Planning

It is obvious that new towns and communities may be built within the scope of existing financial, land planning and control procedures — not efficiently, and perhaps not always successfully. Under the existing structure, results cannot always be said to be repeatable. Another problem encountered is the lack of central or regional planning as to the location and character of new town construction, and as to decisions concerning the purposes to be served thereby. Such lack of planning in the past has had definite detrimental effects upon existing new communities. This has occurred in the case of some of the Greenbelt towns due to construction of highways through the communities and seepage of economic support by lack of control of developmental stresses that occur outside of the immediate area of new communities.

With rare exceptions, the type of planning that now occurs consists of planning by small governmental units such as counties and municipalities. Incentives and inducements consist of a trickle-down system through intergovernmental levels for essentially local action, which is inefficient and fragments responsibility and authority. Planning in the United States is greatly at variance with that of Great Britain, which under the various Planning Acts provides centralized control of planning by local authorities. British planning for new towns constitutes an independent branch of overall planning. The question to be answered to ensure efficient construction of new communities in the United States would seem not to be whether we are to have effective planning on a regional or area-wide basis, but rather how it should be effectuated.

Planning control of new communities and towns may basically be placed in existing municipalities (or other governmental units) or in development agencies to exercise the execution of basic policy for construction of new communities. Advantages and disadvantages exist in both directions. Regional planning where a number of essentially competing municipalities or communities are involved is rarely successful unless the end result is of mutual benefit to all concerned. The deliberate building of a new community does not seem to be a subject that would benefit equally. Arguably, such a creation would be a detriment to all in that, if successful, it might cause a loss of tax base to much of the surrounding area by migration of both population and business toward the new community. It is doubtful whether local regional councils as now formulated will be successful in planning for such communities or be particularly diligent at the task. On the other hand, we should learn from the British experience and not impose planning and control from afar. There must be local participation.

A combination of public and private participation will be necessary...
for successful building of new communities under a planned program. The public participation factor will insure a source of funds and private participation, independence and flexibility in execution. Serious study should be given to the form or forms of structure to be specifically utilized in new town construction. Some alternative suggested areas of study are:

1. Partnership arrangements between the state and federal governments.
2. Metropolitan and regional councils of governments, and planning agencies.
3. State chartered public development corporations to acquire, master-plan, install and sell basic necessities to developers. Coordination of state legislation may strive to untangle the constraints of existing zoning laws and problems of conflicting jurisdictions.
4. Metropolitan-county governmental mergers.
5. Regional councils or other governmental units utilizing private nonprofit corporations as development agencies.
6. State or federally chartered corporations with public-private financing, on the Comsat model.

Although much has been written on regional planning, it appears that virtually nothing has been done in the way of a serious study to determine a satisfactory structure of regional control directed specifically at the creation of new communities and towns. At this point, it seems that a variety of methods may have to be adopted in order to accommodate the differing circumstances of the autonomous, semi-autonomous and heteronomous communities.

CONCLUSION

The building of new towns in the United States is in an emerging stage. The planning and building of new towns has been, overall, a haphazard and ad hoc process. Locations and character have been directed largely by the same factors that have generally motivated the building of residential housing in the United States. The hopes and aspirations of individuals for profit, for acclaim, to relieve social ills, to provide housing for corporations, have moved them to attempt the development of new towns and communities.

Such communities may or may not serve the purposes pursued, but it may not be denied that such new towns that are being built or which have been completed have not substantially contributed to housing relief. There exist no urban programs at either the state or national level which attempt to determine the most efficient placement, scale and use of new towns and communities: Communities that can perhaps illustrate more efficient and
satisfactory concepts of living and housing. They are placed where the market indicates that a profit may be returned.

This is a far cry from the British program. The factors that have enabled the British program to operate successfully — centralized planning, control, finance and direction of location of industry — cannot be transplanted en masse to this country. However, writers in this country have strongly advocated the need for similar programs in the United States. Others, often those in the construction industry, have decried the need for more government planning and regulation.

It may easily be seen that it will be extremely difficult to compose comprehensive programs which will adequately encompass these diverse interests. The formation of a strong centrally-operated and controlled program of new towns and communities along the lines of the British program would seem to be antithetical to the political climate now existing (or which will exist in the foreseeable future) in the United States. The private building trades and industry constitute an extremely strong lobby in Congress which would no doubt be successful in blocking such far-reaching legislation.

In developing a body of law that will aid in the creation of new communities, it would seem essential that local areas have a large voice in the formulation and execution of a program affecting their interests. Likewise, finance and construction would wisely be left in the hands of the private sector of society. However, such a program must be rationally conceived and carried out; otherwise, great economic waste will result. The most pressing need at the present time is for the formulation of some sort of superstructure that can oversee a rational program of new community construction and which will be effective in removing the entangling brush of conflicting local interests so that new communities and new towns can be planned and constructed as entities that are *sui generis*.
The scope of the new act has substantially increased over that of the 1968 Act, as is seen below:

"§4511. (a) The Congress finds that this Nation is likely to experience during the remaining years of this century a population increase of about seventy-five million persons.

(b) The Congress further finds that continuation of established patterns of urban development, together with the anticipated increase in population, will result in (1) inefficient and wasteful use of land resources which are of national economic and environmental importance; (2) destruction of irreplaceable natural and recreational resources and increasing pollution of air and water; (3) diminished opportunity for the private homebuilding industry to operate at its highest potential capacity in providing good housing needed to serve the expanding population and to replace substandard housing; (4) costly and inefficient public facilities and services at all levels of government; (5) unduly limited options for many of our people as to where they may live, and the types of housing and environment in which they may live; (6) failure to make the most economic use of present and potential resources of many of the Nation's smaller cities and towns, including those in rural and economically depressed areas, and decreasing employment and business opportunities for their residents; (7) further lessening of employment and business opportunities for the residents of central cities and of the ability of such cities to retain a tax base adequate to support vital services for all their citizens, particularly the poor and disadvantaged; (8) further separation of people within metropolitan areas by income and by race; (9) further increases in the distances between the places where people live and where they work and find recreation; and (10) increased cost and decreased effectiveness of public and private facilities for urban transportation.

(c) The Congress further finds that better patterns of urban development and revitalization are essential to accommodate the future population growth; to prevent further deterioration of the Nation's physical and social environment; and to make positive contributions to improving the overall quality of life within the Nation.

(d) The Congress further finds that the national welfare requires the encouragement of well-planned, diversified, and economically sound new communities, including major additions to existing communities, as one of several essential elements of a consistent national program for bettering patterns of development and renewal.
"(e) The Congress further finds that desirable new community development on a significant national scale has been prevented by difficulties in (1) obtaining adequate financing at moderate cost for enterprises which involve large initial capital investment, extensive periods before investment can be returned, and irregular patterns of return; (2) the timely assembly of sufficiently large sites in economically favorable locations at reasonable cost; and (3) making necessary arrangements, among all private and public organizations involved, for providing site and related improvements (including streets, sewer and water facilities, and other public and community facilities) in a timely and coordinated manner.

“(f) It is, therefore, the purpose of this part to provide private developers and State and local public bodies and agencies, (including regional or metropolitan public bodies and agencies) with financial and other assistance necessary for encouraging the orderly development of well-planned, diversified, and economically sound new communities, including major additions to existing communities, and to do so in a manner which will rely to the maximum extent on private enterprise; strengthen the capacity of State and local governments to deal with local problems; preserve and enhance both the natural and urban environment; increase for all persons, particularly members of minority groups, the available choices of locations for living and working, thereby providing a more just economic and social environment; encourage the fullest utilization of the economic potential of older central cities, smaller towns, and rural communities; assist in the efficient production of a steady supply of residential, commercial, and industrial building sites at reasonable cost; increase the capability of all segments of the home-building industry, including both small and large producers, to utilize improved technology in producing the large volume of well-designed, inexpensive housing needed to accommodate population growth; help create neighborhoods designed for easier access between the places where people live and the places where they work and find recreation; and encourage desirable innovation in meeting domestic problems whether physical, economic, or social. It is also the purpose of this part to improve the organizational capacity of the Federal Government to carry out programs of assistance for the development of new communities and the revitalization of the Nation’s urban areas.”

The eligibility provisions are:

“§4513 (a) A new community development program is eligible for assistance under this part only if the Secretary determines that the program (or the new community it contemplates) —
(1) will provide an alternative to disorderly urban growth, helping preserve or enhance desirable aspects of the natural and urban environment or so improving general and economic conditions in established communities as to help reverse migration from existing cities or rural areas;

(2) will be economically feasible in terms of economic base or potential for economic growth;

(3) will contribute to the welfare of the entire area which will be substantially affected by the program and of which the land to be developed is a part;

(4) is consistent with comprehensive planning, physical and social, determined by the Secretary to provide an adequate basis for evaluating the new community development program in relation to other plans (including State, local, and private plans) and activities involving area population, housing and development trends, and transportation, water, sewerage, open space, recreation, and other relevant facilities;

(5) has received all governmental reviews and approvals required by State or local law, or by the Secretary;

(6) will contribute to good living conditions in the community, and that such community will be characterized by well balanced and diversified land use patterns and will include or be served by adequate public, community, and commercial facilities (including facilities needed for education, health and social services, recreation, and transportation) deemed satisfactory by the Secretary;

(7) makes substantial provisions for housing within the means of persons of low and moderate income and that such housing will constitute an appropriate proportion of the community's housing supply; and

(8) will make significant use of advances in design and technology with respect to land utilization, materials and methods of construction, and the provision of community facilities and services.

(b) A new community development program approved for assistance under this part shall be undertaken by a private new community developer or State land development agency approved by the Secretary on the basis of financial, technical, and administrative ability which demonstrates capacity to carry out the program with reasonable assurance of its completion.