SOME POLICY CONSIDERATIONS IN THE DRAFTING OF NEW TOWNS LEGISLATION

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As American policy-makers set the stage for a program of new town development, public attention has largely been directed toward two important elements of that program: the nature of the new town communities we plan to build and the conditions under which federal aid will be extended for their assistance. To the extent that new town development will be carried on by public agencies, the content of the state enabling legislation under which these public agencies will operate must also receive serious consideration. This article will draw on the English experience with their new towns in order to examine two basic issues of legislative policy—the problems arising in the selection of new town sites, and the methods to be utilized in the planning and construction of new town communities.

I. Problems in Site Selection

Site selection is the initial and perhaps the most critical decision in the development of a new town community, since the character and location of the site will in large part determine the success of the new town enterprise. Two major considerations affect the selection of a site. It must have the internal characteristics necessary for the construction of a new town, and it must be in a location that implements the planning policy of its region.

A. *Governing Policies*

In the English new towns legislation these problems are left unresolved, and the failure to spell out the criteria for site selection was purposeful. The statute simply authorizes the designation of new towns when to do so is "expedient in the national interest."[1] This language was adopted only after careful consideration in the House of Commons committee, where all attempts made to include more specific criteria were rejected, on the ground

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1. New Towns Act, 1946, 9 & 10 Geo. 6, c. 68, § 1(1) [hereinafter cited as New Towns Act, 1946].

that they would limit the discretion of the government in deciding what factors should be considered in the selection of a new town site.[2]

Apart from legislative requirements, however, a comprehensive review is insured in the process of site selection because the site decision is made in the national Ministry of Housing and Local Government. The "first generation" of English new towns were designated after the Second World War on the basis of comprehensive regional plans, and a similar process is being followed in the location of the second generation.[3] Since the statute is vague, the ministry has had considerable freedom in developing site selection policies. For example, the first generation new towns were intended as self-contained communities, located a substantial distance from the nearest urban center. This policy has been tacitly amended in the location of the second generation new towns, some of which are as close as two or three miles to a large existing city.

B. *Criteria for Site Selection*

In addition to policies governing site location, the ministry has also elaborated criteria to determine whether the site can successfully be developed for new town purposes. Geographic considerations are important, and the ministry will check on such questions as prevailing wind patterns to avoid problems of air pollution from nearby urban centers. Electricity and gas services are no longer a problem in England with the development of national grids, but water supply and sewage disposal can be difficult, especially as the effect on adjacent rivers must be carefully considered. Access to roads and railroads is also considered.

Although the open-ended brevity of the English legislation would not be acceptable in an American context, this brief review of the English site selection process points the way toward some of the difficulties that can be expected in the choosing of sites in an American program. The discussion that follows assumes that the decision on new town location will have to be made by a public agency at a governmental level which is superior to the host of counties, towns, cities, and special districts that inhabit the American urban landscape. A regional or preferably a state planning and development

2. H. C. STANDING COMM. A., REP. cols. 3-15 (May 21, 1946). The bill was introduced and passed during a Labor Party administration. Conservative members of the Standing Committee had urged an amendment requiring the Minister, in designating a new town, to have "regard to the requirements of agriculture." The amendment must be considered against a background of national concern over the amount of land available for agricultural use.

3. For example, sites for new towns are suggested in MINISTRY OF HOUSING AND LOCAL GOVERNMENT, THE SOUTH EAST STUDY: 1961-1981, at 70-74 (1964). This is a study that has been prepared for the region around London.

agency would be the logical choice for this responsibility. The first part of this section will discuss some of the considerations that would have to enter into its decision on site selection, and that will influence the content of the legislation under which this decision is made. In the second part of this section some effects of the site selection decision on governmental and development policies will be examined.

1. *"In Accordance with a Comprehensive Plan"*[4]

The English new towns are in fact selected on the basis of regional plans and surveys, and in America the federal commitment to comprehensive planning in federally-assisted programs will no doubt lead to the inclusion of a planning requirement in state new towns legislation. As this requirement might be formalized, no new town could be designated except in accordance with a comprehensive plan for the region or area in which the new town is to be located. Comparable experience is presently being obtained in federally-assisted Community Renewal Programs, which are surveying needs and priorities for urban renewal in large cities.[5] While the techniques for surveying new town potentialities would be different, at least the Community Renewal Programs provide experience in the long-range review of both planning and development goals for entire communities.

If experience with comprehensive planning requirements in other development programs is any guide, however, the mere inclusion of such a requirement in new towns enabling legislation will raise more problems than it solves. Intuitive impressions in urban renewal, for example, suggest that renewal agencies have more often ignored comprehensive plan recommendations than they have followed them, and there is a real question whether individual projects have in fact furthered the overall plan for the community. Some of these problems would no doubt be obviated in a new towns program, since presumably the agency that prepares the comprehensive plan will have some if not the major voice in site selection.

In the statute, the role of the comprehensive plan as a policy document must be clarified. Simply spelling out a planning process is not enough, especially in the context of new town site selection in which the elements of the plan must functionally be related to the problem of choosing specific sites. What is needed, of course, is an expansion of the regional planning

4. Haar, *In Accordance With a Comprehensive Plan*, 68 HARV. L. REV. 1154 (1955). The author discusses the fundamental and necessary interrelation between the zoning ordinance and the overall city plan.

5. See NATIONAL ASS'N OF HOUSING AND REDEVELOPMENT OFFICIALS, COMMUNITY RENEWAL PROGRAM EXPERIENCE IN TEN CITIES (1964).

concept to include the consideration of new town sites as one of its elements, since the preparation of plans solely for the purpose of new town site selection would lead to fragmentation. But with no previous experience in the selection of new town sites, American planners will have to proceed by trial and error until the right combination of factors can be found.

2. *Regional Development Strategies*

This heading could include most of the choices to be made in the site selection process, but I mean to refer particularly to an assessment of the rate, direction, and intensity of growth in the region in which the new town will be located. Part of this evaluation will include an appraisal of the regional economic base, and the role which the town will be expected to play in the further development of that base. A full elaboration of regional development strategies will especially have an effect on the location of the new town in relation to other urban centers.

Most important, a decision on regional development will have to face the problem of limits. Involved here is not only the issue of growth limits for the new towns themselves, but for the metropolitan region within the geographic compass of the regional plan area. A new town program can make sense only against a population target, and only in a planning context in which population movements can be directed, both outside as well as inside the new town areas. A regional plan can specify the strategies for regional development, and thus for the location of the new town in view of these strategies. But while population growth within the new towns is subject to control, the adequacy of legal tools for this purpose outside the new town areas is certainly questionable.[6]

3. *Development and Land Value Pressures*

As part of the process of locating new towns within the urban region, new town planners will have to decide whether new towns should be used to counteract market trends in land development or to reinforce these trends within the more adequate developmental context which the new town community can provide. An answer to this question is tied in closely with the control of land values within new towns, and with the control of fringe urban development in areas adjacent to new towns. If the new town is located away from areas of developmental pressure, land values will tend to rise less rapidly within the new town and fringe development will be easier to control. In areas of existing developmental pressures, just the opposite will be true. In this context, the relationship of the new town to

6. See Christine Bldg. Co. v. City of Troy, 367 Mich. 508, 116 N.W.2d 816 (1962).

existing communities becomes critical. If the new town is located too close to the developing edge of an existing town or city, the intervening area may become subject to developmental stresses that may prove impossible to control in an American context.[7]

4. *Open Sites v. Developed Sites*

The choice of either an open or a developed site presents problems. On an open and undeveloped site the potentialities for successful development are clearly greater, land value inflation is less likely, and the new town designation will not "blight" existing development with the threat of future acquisition. But the question arises whether an existing community with proven and expected development potential might not be a better selection. In an existing community, however, the problems of doing equity to landowners on the site are greater since there will be relocation difficulties whenever existing residences or businesses must be demolished to make way for new development.[8] These difficulties might be particularly acute whenever the new town device is used to achieve urban or rural renewal of an inadequate townsite.[9]

7. For suggestions for the implementation of green belt wedges in one area see MARYLAND-NATIONAL CAPITAL PARK & PLANNING COMM'N, ON WEDGES AND CORRIDORS: A GENERAL PLAN FOR THE MARYLAND-WASHINGTON REGIONAL DISTRICT (1962).

8. The relocation problem will be different in a new towns program from what it is in urban renewal programs because not all persons living or doing business on the town site will find easy accommodation in the new community. For example, farmers displaced by new town development cannot be relocated within the new town, and undesirable business will no doubt be eliminated from the site and will have difficulty relocating in the area. On the other hand, relocation of families will be easier than it is in urban renewal because the town will be expanding in size. This statement assumes that housing will be available within the new town for low-income families residing within the new town area. One problem is whether the statute should require the relocation of displaced families within the area of the new town. Urban renewal standards require relocation within the community but not necessarily within the project area from which families are displaced. However, this requirement would have no meaning as applied to a new town.

The New Towns Act, 1946, § 5(2), requires "so far as practicable" that persons living or carrying on business within the designated area be given "accommodation suitable to their reasonable requirements." See also Town and Country Planning Act, 1944, 7 & 8 Geo. 6, c. 47, § 30(1), as applied, New Towns Act, 1946, § 6(1)(d) [hereinafter cited as Town and Country Planning Act, 1944]. Conservative efforts to tighten up the relocation provisions were only partially successful. See H. C. STANDING COMM. A., REP. cols. 169-80 (May 30, 1946); 424 H. C. DEB. (5th ser.) 2440-60 (1946). The Conservatives sought in part to delete the "so far as practicable" limitation from the re-housing requirement. In debate in the House of Commons, Lord Silkin, then the responsible minister, indicated that he would find accommodation for all displaced families or businesses except when for physical reasons he could not do so.

9. A Conservative amendment to the New Towns bill would have authorized the designation of an area in order that it might be "redeveloped" as a new town. This

5. *Access and Accessibility*

In view of the ever-increasing importance of road transport, and the expectation that the Interstate Highway network will be fully developed in the foreseeable future, access to the Interstate system will be an important consideration in new town planning. In fact, the importance of access may overshadow some of the other factors that ordinarily would be considered in the process of site selection. Unfortunately, in the states in which an extensive program of new town development can be expected, the location of highways and particularly of interchanges will be relatively fixed by the time site selections can be made. Whether new access points could be provided without violating Interstate standards is an open question. As interchanges are located in outlying areas where planning controls are minimal, there also is a real chance that those interchange sites that are desirable will have been preempted by scattered development. Hopefully, statutory powers will be made available in some states to control development at interchange locations, and this mechanism can be adapted to the reservation of potential sites for new towns.

6. *Site Development Potentialities*

So far we have been concentrating on the development of criteria which will affect the location of the new town site. In addition, the legislation will have to contain language which allows consideration of the potentiality of the site for the development of the new town community. At this point the statutory treatment need not be overdetailed, and site-rating factors similar to those used by the English ministry can probably be developed under a generalized statutory standard which requires the site-selection agency simply to consider development potentialities. For example, the agency should be empowered to consider soil conditions, sewage and water capabilities and the like.

One problem to consider is whether the statute should contain minimum policy directives in addition to an elaboration of factors bearing on site criteria. For example, in California, where preservation of agricultural land has become a problem, the statute might direct a preference for hilly and

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amendment was rejected on the ground that the statute already conferred power to redevelop an existing developed area as part of a new town project. The amendment would have conferred power to designate an area solely for purposes of redevelopment, and this power was not wanted. H. C. STANDING COMM. A., REP. cols. 15-20 (May 21, 1946). Careful attention will have to be given to this point in American legislation in view of the independent requirements of the federal program for urban renewal.

other rough topography that does not lend itself to cultivation.[10] Following the precedent set by some planned unit development ordinances, a minimum acreage requirement might be included. Landscape and recreation potentialities could be considered and other problems for which a policy directive can be utilized will suggest themselves.

C. *Effect of Site Selection*

The selection of a new town site will have both an external and an internal effect. Externally, the designation will affect the existing local government structure. Internally, the legal effect to be given to the designation order will have a bearing on the success of the new town's progress. These problems will be discussed in turn.

1. *Effect on Existing Government Powers and Structure*

Building a new community of substantial size in the American countryside will create problems for the existing structure of local government. As no section of England is in an unincorporated area as we know it, an existing governmental unit is either adapted for the government of the new town or a new unit is created.[11] During the development period, both the new town and the local authority share governmental responsibilities.[12]

Since American legislation could adopt this alternative or other variants, the site selection process should probably be relatively uninfluenced by the presence or absence of an existing unit of government to harbor the growing community. Indeed, in a relatively undeveloped area there is likely to be no existing municipal government which is capable of providing services and regulatory functions for a developing new town, and the choice of this kind of an area for a new town community is likely to be dictated to some extent by a preference for open sites. A related question is whether the new town should be put under the sponsorship of an existing community, if one is available. The English rejected this approach in their New Towns Act,[13]

10. See the discussion in note 2 *supra*. For a discussion of the California problem see Ciriacy-Wantrup, *The "New" Competition for Land and Some Implications for Public Policy*, 4 NATURAL RESOURCES J. 252 (1964).

11. In England, local government lines are redrawn and local government units created by a national boundary commission. A Conservative amendment to the New Towns Bill would have required the commission to make alterations in local government areas immediately after the designation of the new town. Lord Silkin indicated that the governmental problem would receive all the necessary attention, but he was reluctant to be tied down by statute. The amendment was not adopted. H. C. STANDING COMM. A., REP. cols. 296-99 (June 20, 1946).

12. See New Towns Act, 1946, § 2(2).

13. H. C. STANDING COMM. A., REP. cols. 63-69 (May 23, 1946). The New Towns legislation was preceded by a series of reports by a committee under the chairmanship of

in part to avoid the parochialism of municipal growth objectives, although local sponsorship of town development projects is authorized under more recent legislation.[14] In some states, the liberal use of annexation powers would permit a new town to be included within the ambit of an existing community, and this possibility should be investigated in the course of site selection.[15]

The availability of planning control powers in the area immediately surrounding the new town site should also be considered. In England, the comprehensive and mandatory nature of planning controls and the national review of local planning decisions make this question a secondary one at best. But in America the exercise of planning control powers at the local level depends in part on the availability of enabling legislation and in part on local initiative. Since many new towns will be located in outlying and relatively undeveloped areas, effective planning and zoning controls may not always be available. While the development machinery for new towns can provide a planning mechanism for the new town site, some method is needed to control the growth of development on the new town edge. In part this problem is a function of the size of the new town, as the lack of effective planning powers in the vicinity of the new town can be compensated for to some extent by enlarging the site area, placing a protective buffer within the control of the new town administration. This possibility was recognized in the discussion on the English legislation.[16] However, in the

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Lord Reith which examined the various possible alternatives for new town administration. The Reith Report had recommended that local authorities be authorized to build new towns. New Towns Committee, *Interim Report*, CMD. No. 6759, at 9 (1946) (Reith Committee).

14. Town Development Act, 1952, 15 & 16 Geo. 6 & 1 Eliz. 2, c. 54.

15. Note, however, that a new town will ordinarily be separated from an existing community by a belt of undeveloped land. As a result, contiguity requirements in annexation laws may hinder annexation. Control of the intervening undeveloped area may also prove difficult.

16. Section 1 of the New Towns Bill originally authorized the Minister to designate as part of the new town "any adjacent land which in his opinion ought to be dealt with as part of that area." This clause was attacked by the Conservatives as unnecessarily vague. H. C. STANDING COMM. A., REP. cols. 33-39 (May 21, 1946). It was justified by Lord Silkin as a means "to ensure that within a reasonable distance one is ensuring that the community gets the benefit of the values which it has itself created." *Id.* at 40. A Conservative member had argued, in reply, that "If the right hon. Gentleman starts off in a sort of hunt across the country, in order to overtake the rise in land values, he will find that he has travelled a long way before the end of the day." *Id.* at 39. The clause was deleted when it was considered by a committee of the whole house. 424 H. C. DEB. (5th ser.) 2406 (1946). The deletion of the clause can be questioned. In practice, English new towns have not attempted to acquire a protective buffer, partly because of the stringency of planning controls in adjacent areas. The section of the English act which governs land acquisitions does authorize the development corpora-

context of American commuting patterns and the expected effects of the completed Interstate Highway System, it is doubtful whether the control even of a substantial fringe area would be meaningful. The legislation will have to consider the creation of effective planning machinery for adjacent areas if none is available. Another alternative is to confer extraterritorial zoning and planning powers on the new town. Especially in outlying areas, where no existing communities may lie near the new town, this alternative has possibilities. In more settled areas, the problem of overlapping jurisdictions may create difficulties.[17]

2. *Effect of Designation Order on Development of New Town*

As it was initially proposed, the English new towns legislation was to authorize the acquisition of all of the land within the designated new town area immediately upon the approval of the new town.[18] This method of acquisition was not included in the legislation as enacted. Site designation does not immediately vest title to designated land in the new town development corporation, but gives it the authority to acquire land within this area as it is needed.[19] Two problems arise if the designation order does not immediately vest title to land in the public agency charged with new town development. One relates to the compensation to be paid for land as it is acquired. The development of the new town can be expected to appreciate the value of land within the designated area, so that values will be substantially higher at the close of the development period than they are at the beginning. Early land acquisition, or sizable acquisitions immediately following the designation order, can help avoid this problem. Another possibility is to consider adoption of a statutory formula which will discount from the acquisition price of land within a new town any values which are attributable to the new town's development. This is the approach taken in the English legislation, and it raises complications of its own.

A second problem arising out of the delayed acquisition of land within the designated area can be traced to the "blighting" effect of the new town designation. Landowners within the new town will know that their land will be acquired for new town purposes, but they will not know when it will

tion to acquire land outside the designated area "which they require for purposes connected with the development of the new town," or "for the provision of services for the purposes of the new town." New Towns Act, 1946, § 4(1).

17. See the complicated statutory formula in the Indiana legislation. IND. ANN. STAT. § 53-734 (1964).

18. "Immediate purchase by the agency of the whole site would simplify management and control." New Towns Committee, *Second Interim Report*, CMD. No. 6794, at 4 (1946) (Reith Report).

19. New Towns Act, 1946, § 4(1).

be acquired. Some form of reverse eminent domain procedure should be open to landowners within the designated area, although its precise form will be difficult to devise. Excessive use of this procedure may upset the new town's development strategies, require the tying up of new town capital in advance of development, and force the expensive management of acquired properties. Note that the problem of new town "blight" becomes more serious on a site which is a developed community rather than an open agricultural area. The English have a partial solution to this problem. The development corporation cannot be forced to buy any land until seven years have elapsed since the designation order, but then its obligation is absolute.[20]

No doubt these are not the only problems which will arise in the selection of new town sites. Nor have we developed satisfactory administrative processes for weighing and balancing the many factors that influence a decision about the land environment, such as a decision to designate a new town site. To some extent, the criteria that have been elaborated in this discussion are self-contradictory. They cannot all be given equal weight, and the deciding agency will have to pick and choose among them. A reference to statutes governing annexations and incorporations indicates two possible approaches. Criteria can be phrased as standards to be satisfied as a prerequisite for site selection,[21] or they can be included as factors to be considered in reaching a site decision, the deciding agency to arrive at a method for evaluating the factors that the statute employs.[22] If the second method is followed, the statute might direct the deciding agency to utilize its judgment in deciding how to evaluate the criteria that have been provided, and some tentative policy directives have already been suggested.

II. Planning Controls in New Town Areas

Some fundamental decisions must be made about the operation of planning controls in new towns, a basic issue in any program of project develop-

20. New Towns Act, 1946, § 6(4). Under this section, the development corporation must purchase the land if seven years have elapsed since the approval of the designation order and if a purchase notice is served by the landowner. This section was not in the original bill, but was added in the House of Commons. 424 H. C. Deb. (5th ser.) 2463-68 (1946). Its addition had been suggested by the Conservatives at the Committee stage. H. C. Standing Comm. A., Rep. cols. 131-35 (May 30, 1946). The Conservatives preferred a five-year grace period but Lord Silkin suggested a seven-year period on the ground that by this time all of the land needed for new town development would have been acquired. More than seven years have elapsed since the designation of the first new towns, and they find themselves still acquiring land, partly because some of them are scheduled for expansion. As it has worked out in practice, the statutory obligation to acquire land has not proved burdensome.

21. See Ind. Ann. Stat. § 48-109 (1964) (incorporation of new municipalities).

22. See Minn. Stat. Ann. § 414.05 (Supp. 1964) (incorporation of new municipalities).

ment and one which has been compromised in the closest American prototype, the urban renewal program. While the urban renewal agency is responsible for the preparation of a master plan and covenants[23] which bind the redeveloper, it must rely on the municipality for the enactment and enforcement of the necessary planning and zoning controls. State statutes usually authorize planning and zoning cooperation agreements between the municipality and the renewal authority,[24] but their implementation raises serious legal questions because of the legislative nature of the planning control function.[25] Besides, the problem of planning controls is less critical in an urban renewal project. The project area is smaller, the development process is finished in a relatively short period of time, and it utilizes all of the available project space. New towns will cover much larger areas and will take a longer time to complete. They involve a growth dynamics in which large areas are left undeveloped for long periods, and the development pattern can be expected to change several times before the new town is completed. In addition, speculative pressures for private development in new town areas will be considerable, and may damage the new town plan if not controlled. For all of these reasons, the problems of planning control will be considerably more difficult. This discussion again assumes that the new town will be developed by a public agency.

A. *Types of Planning Controls*

Two alternatives are possible in the provision of planning controls for new town areas. The urban renewal example can be followed, and planning controls can be made a responsibility of the municipality or county having jurisdiction of the new town area. The expected absence of planning controls in outlying areas may make this solution difficult, but presumably some statutory method can be found through which a state or regional agency can initiate controls in areas which do not have them. Another set of problems will arise if planning controls have been activated, but are shared by a county and perhaps by two or three municipalities. This possibility is a real one if the new town covers a large area.

If planning control powers are not given to an existing governmental entity they can be given to the new town development agency, which would

23. See U.S. HOUSING AND HOME FINANCE AGENCY, URBAN RENEWAL MANUAL, PART 10.

24. *E.g.*, IND. ANN. STAT. § 48-4204 (1963).

25. In New York City Housing Authority v. Foley, 32 Misc. 2d 41, 223 N.Y.S.2d 621 (Sup. Ct. 1961), the city had agreed to maintain existing zoning without variance in the vicinity of a public housing project. This agreement was interpreted not to prohibit the city from granting a zoning variance, on the ground that to hold otherwise might lead to a finding that the zoning ordinance was unconstitutional.

have the authority to exercise them within the new town area. This solution has been adopted in the English new towns program, and it will be given close examination here. The English statute authorizes the creation of a new town development corporation which is responsible for planning the new town.[26] In practice it also undertakes most of the development within the new town designated area.

The difficulty with conferring planning powers on an American new town development corporation is that an opportunity must be made available to review its planning decisions, as they may have a considerable effect on surrounding areas. Some method would have to be found in an American context to afford an effective external review, partly through an appeal to a superior agency and partly through consultations with nearby govermental units. The English have utilized both methods. The Ministry of Housing must approve planning and development proposals as they are made by the development corporation, and in doing so it must consult with the local planning authority having jurisdiction of the new town. If objections are raised by the local planning authority they are reviewed and settled by the ministry. In addition, the Treasury must give its approval whenever public funds are advanced for development. National review thus has two purposes. The quality of the development will be reviewed by the ministry in every case, and in addition it becomes a forum for the adjudication of disputes between the new town agency and its planning authority. In this discussion we are interested in the role of the ministry in exercising its reviewing function, apart from its role as adjudicator. Furthermore, we are primarily interested in the strengths and weaknesses of the development process as they relate to the internal development of the new town.

The basis of the system for planning and developing English new towns is a series of checkpoints, each of which must be passed before the new town can be completed. How these controls work in practice will briefly be reviewed.

1. *Master Plan*

While the New Towns Act does not require a plan for the new town, the ministry in practice has asked that plans be prepared. Since the plan is nonstatutory, the ministry has an instrument of control which it can use quite flexibly in ordering development within the new town designated area. Although public hearings are held on the plan, no official ministry approval is given, so that the plan does not have official sanction and does not automatically control the character of development within the new town. How

26. New Towns Act, 1946, § 2(1).

the master plan is used in the control of new town development will be indicated later. One advantage of the informal plan is that the ministry has the freedom to experiment with various methods of plan preparation and documentation. The opportunity to prepare a town plan as an entirety from the very beginning opens up a range of possibilities in the use of the site which can be exploited in plan preparation through such devices as three-dimensional models and elevation drawings. While the early new town plans were conventionally two-dimensional, there is every indication that the ministry will take advantage of its opportunity to experiment in new and possibly more useful master plan techniques.

2. *Land Acquisition*

In most instances the next step in the development of the new town is the acquisition of land for development by the development corporation. If land is acquired through voluntary purchase the minister must give his permission, and if land cannot be acquired voluntarily the development corporation must secure a compulsory purchase order.[27] Objections can be filed to the compulsory purchase, in which case the minister will hold a hearing in which he will inquire into the merits of the acquisition.[28] Compensation issues cannot be raised, and the designation order cannot be challenged, but otherwise the minister may look into the merits of the acquisition and may consider whether the land in dispute is appropriate to the purposes of the new town and is needed at the time its acquisition is sought. In the ordinary case the land to be acquired will be needed for purposes specified in the master plan, but if a revision in the master plan is indicated by the nature of the compulsory purchase, the plan can be reviewed in the compulsory purchase proceeding. Another requirement which complicates the compulsory purchase procedure is the so-called section 3(1) development proposal, another checkpoint in the development of the new town.

3. *Development Proposals*

As indicated, no land may be developed for new town purposes under the New Towns Act unless permission is first obtained from the Minister of Housing. As this requirement is imposed by section 3(1) of the New Towns Act,[29] these proposals have been called "section 3(1)" proposals, and will be referred to in these terms here.

Apparently the submission of a section 3(1) proposal may either precede

27. New Towns Act, 1946, § 4(1).

28. Town and Country Planning Act, 1944, Sch. 1, as applied, New Towns Act, 1946, § 9(1).

29. This section will be renumbered to Section 6(1) by the New Towns Act, 1965.

or follow the acquisition of the land for which the proposal is submitted, although submission of the development proposal will usually follow the acquisition of the land in most instances. No statutory standards govern the minister's discretion in passing on development proposals submitted to him, but in practice he will use this opportunity to conduct as broad or as narrow a review as seems to be required. Development proposals have usually been submitted on an area basis; that is, they will cover an entire residential neighborhood, a neighborhood shopping center, or even a town center. Since ministerial permission for development under section 3(1) eliminates the necessity for the local planning permission which is usually required under the English planning act, the section 3(1) proposal is of considerable importance in the administration of the new towns program.

What is most important is the degree of detail to which the section 3(1) proposal commits the new town development corporation. The corporations understandably desire a minimum of detail so that they will keep as much freedom as possible in the development of the town. The local planning authorities, on the other hand, want to the tie the development corporation down as much as possible at the time the section 3(1) proposal is approved by the ministry. Just how general the development proposal must be has not yet been settled, although the tendency so far is to submit the proposal schematically and in outline form. For example, a proposal for neighborhood development might show a broad allocation of land for housing purposes without detailing the kind of housing that will be built.

Another problem is that a section 3(1) proposal may so depart from the master plan that it has to be considered as a revision. Since the master plan is not officially approved, nothing compels the minister either to follow it or not to follow it. Nevertheless, the plan is persuasive of the development that ought to be carried on at the intended site, and if the section 3(1) proposal makes a substantial change the ministry may treat the proposal as a plan amendment and call for a public hearing. Otherwise it will approve, disapprove, or modify the section 3(1) proposal *ex parte* without the benefit of a hearing. While this system may seem too informal, it has the advantage of providing a built-in feedback which can be quite useful as a self-correcting device during the time the new town is being built. For example, original master plan intentions for the location of industrial areas can be changed through section 3(1) proposals if a later evaluation indicates that the areas originally selected may not be properly located.

4. *Treasury Approval*

The execution of development proposals submitted by the development corporation is further complicated by the necessity of obtaining approval

from the Treasury before any money advances can be made to carry on actual construction. This section of the statute contains a standard governing the discretion of the Treasury in giving or withholding approval, and it requires that "proposals for development . . . [be] likely to secure for the corporation a return which is reasonable, having regard to all the circumstances, when compared with the cost of carrying out those proposals."[30] Two problems are raised by this provision. One has to do with the timing of Treasury review and the developmental scale at which Treasury review will be imposed. While the statute ties Treasury review directly to the development proposals made under section 3(1), nothing prevents the Treasury from reviewing section 3(1) proposals as a group, or from providing an annual block review on the basis of outlined intentions. However, the developmental scale at which the Treasury conducts its review would seem to be governed by the nature of the proposals as they are submitted for ministerial approval under section 3(1).

When the new towns bill went through Parliament, concern was expressed that over-detailed Treasury review would hamper new town development. There is some expression of legislative intent that Treasury review not be tied down to individual development proposals as they are made.[31] In practice, however, the Treasury has required the review of individual proposals, and if the section 3(1) submission is too generalized the development corporation may later be required to submit a more detailed proposal for Treasury purposes even though an additional submission is not required by the statute.

A second problem relates to the character of the review which the Treasury affords. The statute requires a fiscal evaluation which may conflict with the planning aims which the new town is supposed to advance, and the legislative history points out that projects which are not revenue-producing will have to be judged in terms of the overall requirements of the town or they will be disapproved.[32] For example, a park could not be expected to bring in a financial return, but since it will improve residential amenities it can be expected to add to the financial viability of residential housing. Treasury control of financial advances has allegedly hampered new town development in some instances. But while the section requiring

30. New Towns Act, 1946, § 12(7).

31. See H. C. STANDING COMM. A., REP. cols. 72-78 (May 23); 208-16 (June 4, 1946). Lord Silkin indicated that the development corporation would go to the Treasury with "a sufficiently comprehensive scheme to enable all the unremunerative parts of the development to be taken into account with the remunerative parts." *Id.* at 215.

32. *Ibid.* The legislation originally required that the development proposal produce a reasonable "annual" return, but the word "annual" was dropped in the House of Commons. 424 H. C. DEB. (5th ser.) 2468 (1946).

Treasury approval of development proposals has generated conflicts, these have usually been marginal disputes over new town projects, such as golf courses, which arguably do not fall into the publicly-sponsored category. These disputes are reminiscent of American judicial disagreements over the scope of the public purpose limitation on municipal spending.

B. *Need for Planning Controls*

English planning controls in new towns can be criticized as involving the national ministries and the development corporation in too many repeated and detailed examinations of project proposals. Furthermore, the informal, non-statutory, and flexible procedures under which new town development proceeds means that the development corporation is never assured that its development ideas will be accepted. An alternative system would provide a single generalized review in which both the planning and fiscal merits of development proposals would be approved in outline form and the details of execution would be left to the development corporation. Nevertheless, the very flexibility of the English system provides important opportunities for self-correcting adjustments during the process of town development.

This review of the English new town development process indicates that substantial changes will have to be made in conventional American planning techniques if we give the new town development agency the power to adopt and execute the new town development plan. The necessity of providing some method of external review, both on the merits of the new town plan and for purposes of fiscal control, has already been indicated. We also need to devise some statutory technique, consistent with our legal system, which will relate the new town community plan to the development projects that implement that plan. We have historically separated these processes, so that conventional community master plans with few exceptions cannot directly be implemented by controls with a legal sanction. What the English new town system suggests is that we can provide some method of implementation under which individual development projects will continuously and directly be tested against the new town development plan. Especially in American new towns, in which private developers can be expected to participate substantially in the building process, a direct method of plan implementation is essential.

Conclusion

While existing institutions can often be adapted to new programs, the scale and nature of a program for new town development will require more than just a revision of available legal techniques for land-use planning and

development. Site selection problems, which appear easier in urban renewal programs because of the physical visibility of blight, require the exercise of critical judgments about the quality and location of the new town community. The long-range and extensive nature of new town development, and the importance of public involvement in development decisions, require the elaboration of new controls which can tie together both planning decisions and development decisions. The statutory solution of these problems will require careful consideration by legislative draftsmen before a new town development program can successfully be initiated.