

LEGAL IMPLEMENTATION OF A
SATELLITE CITY PLAN:
THE PLANNED DISPOSITION OF
PUBLIC LAND*

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At no time in our history have the problems of urban living received so much attention. Present deficiencies in our cities and the projected increase in the urban population are forcing metropolitan areas to undertake the massive, simultaneous tasks of redeveloping their existing physical environment and planning for their expansion. The starting point for this effort is a widespread attitude about urban growth as it has occurred in this country:

Our cities grow by accident, by whim of the private developer and public agencies. . . . By this irrational process, non-communities are born—formless places, without order, beauty or reason, with no visible respect for people or the land. . . . The vast, formless spread of housing, pierced by the unrelated spotting of schools, churches, stores, creates areas so huge and irrational that they are out of scale with people—beyond their grasp and comprehension—too big for people to feel a part of, responsible for, important in. . . .¹

As a response to these conditions, many metropolitan areas are preparing master plans to guide their future development. Such a plan²

*This study is one of several studies of the Memphis, Tennessee, metropolitan area which were carried out during the 1967-68 academic year by students in the LL.M. program in Urban Studies at Washington University, School of Law.

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1. Hearings on New Communities Section, Title II of the 1966 Housing Bill, 90th Cong. (1966) (statement of James W. Rouse) *quoted in* Hoppenfield, *A Sketch of the Planning-Building Process for Columbia, Maryland*, 33 J. Am. Institute of Planners 398, 399 (1967).

2. MEMPHIS-SHELBY COUNTY PLANNING COMM'N, MEMPHIS METROPOLITAN MASTER PLAN (1966).

has been prepared for the metropolitan area of Memphis, Tennessee, by the professional staff serving the combined Memphis and Shelby County Planning Commissions. Like most plans, the Memphis plan contains maps and text depicting future land uses, growth patterns, and population distribution. Like most plans, the Memphis plan does not discuss the legal problems of effectively implementing its goals.³ Also like many other plans, including the now-famous plan for the year 2000 for Washington, D. C.,⁴ the Memphis plan projects a pattern of regional growth along radial corridors which contemplates the development of a series of metropolitan subcenters. This paper will explore some of the legal difficulties associated with the implementation of plans for one of these subcenters—the development of a satellite city on 5000 acres of presently undeveloped public land.

I. BACKGROUND

A. The Site and Past Planning

The City of Memphis is located on the Mississippi River, in the extreme southwestern corner of the State of Tennessee. To the west, across the river, is Arkansas and to the south, Mississippi. The site discussed in this paper lies approximately ten miles directly east of the heart of the City's central business district, and is presently used as the Shelby County Penal Farm. It is located in Shelby County, on the edge of the Memphis city limits. (See map.) Originally acquired by Shelby County in 1928 with the purchase of 1600 acres, the farm expanded to its maximum size of approximately 5017 acres by 1942. Today, the Penal Farm area is slightly smaller as a result of minor dispositions and road dedications.

An area this size in the very heart of a metropolitan region obviously presents very attractive possibilities for development. Attention was first directed to the farm in 1955, when the University of Tennessee School of Agriculture made an analysis of its operation. This study concluded that the total acreage needed for farming could be reduced substantially without sacrificing the County's investment or the Farm's

3. The plan for Germantown, Maryland states:

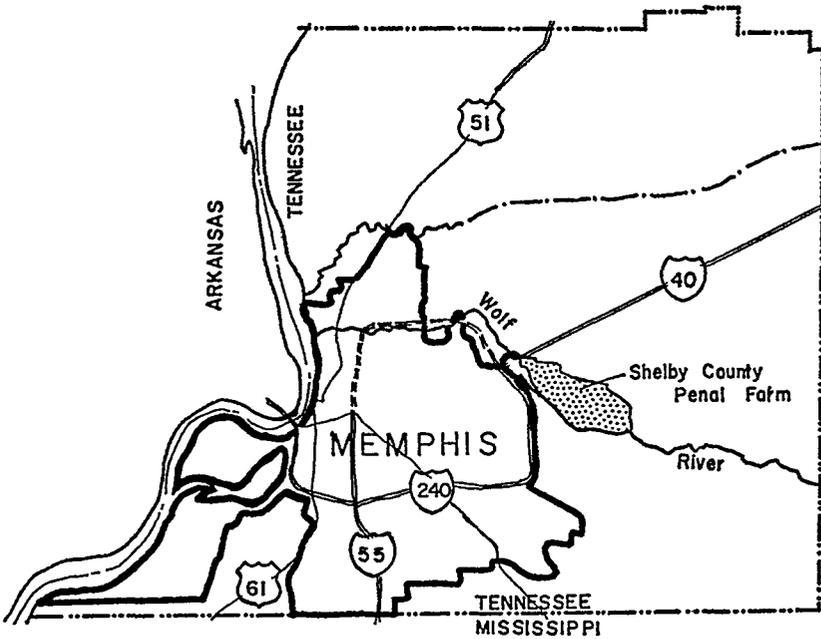
Implementation . . . must now be considered as a continuing process, wherein full use is made of all available codes, regulations, procedures and policies that will carry out the intent of the Plan.

NATIONAL CAPITAL PARK AND PLANNING COMM'N, MASTER PLAN FOR GERMAN-TOWN, MARYLAND, at 35 (1966).

4. NATIONAL CAPITAL PARK AND PLANNING COMM'N, A POLICIES PLAN FOR THE YEAR 2000 (1961).

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utility.⁵ The Agriculture School report did not specifically recommend a future use for the property, but the County, hoping to sell some of the property and to increase its tax base, responded in 1960 by rezoning for industrial use 400 acres in the western, and 2000 acres in the eastern sections of the farm. However, only one 10-acre site on the west was sold and developed. In 1962, this disposition policy was reversed and no land has been sold since that time.⁶

To develop some guidelines for the future use of the penal farm property, the County Quarterly Court in August of 1964 officially requested that the joint city-county planning commission determine "the most economical and best uses" for the Penal Farm property.⁷ This request was received with relief by many members of the Memphis-Shelby County Planning Commission. The Commission and its staff, then involved with revising the metropolitan area's comprehensive plan and forecasting future development requirements, had feared that the County Quarterly Court would ignore the long range potential for the site and dispose of the property in a haphazard piecemeal fashion in order to meet its increasing fiscal obligations. The city's incorporated suburban fringe had already reached the western edge of the farm and was beginning to fill in. Memphis planners estimated that the sale of the Penal Farm land would produce about \$5000 per acre on the average, as some of the land was presently below the flood line and was not readily marketable.

The general aim of the Planning Commission study was to explore the relationship between the Penal Farm and the overall metropolitan plan which had recently been updated, revised, and extended. The Memphis metro-plan had noted the extent to which the Memphis metropolitan area had developed as low-density suburban scatter.⁸ Rejecting the continuation of the existing Memphis growth pattern, the planners stated that:

5. MEMPHIS-SHELBY COUNTY PLANNING COMM'N, PENAL FARM STUDY, at 2-3 (1966) [hereinafter cited as PENAL FARM STUDY].

6. *Id.*

7. *Id.* at 1.

8. Much like the Washington, D.C. and the Denver, Colorado plans, the Memphis plan reflects five planner biases. First, the present pattern of scattered development is inherently bad. Second, open space must be preserved so as to provide garden cities. Third, present density patterns and the central business district must be preserved. Fourth, the distance from home to work must be reduced. Fifth, a wider range of housing types and locations must be provided. *See*, Wheaton, *Operations Research for Metropolitan Planning*, 29 J. AM. INSTITUTE OF PLANNERS 250, 254-55 (1963).

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Continuation of present trends would extend existing policies and characteristics of development: low densities and dispersed development, greater travel times, and service costs increasing at a greater level than population increases.⁹

A multiple centers pattern was recommended by the Planning Commission as the general form of development. In a study of the Penal Farm, the Planning Commission summarized the goals of this pattern as follows:

Each center would serve a community and would include a complex of residential, commercial, office, and service activities. Open space, where practicable would surround and give definition to communities. Within each community a number of neighborhoods would provide individual identity with a variety of dwelling unit types and densities. Each neighborhood and community would provide conveniences consistent with present standards of shopping and public facilities.¹⁰

The Penal Farm was suggested as the nucleus of one such subcity.

B. The Development Opportunity

The Penal Farm site offers Memphis a unique opportunity. The planning and development of a complete community, starting with raw land, affords many of the same advantages as the British new town sites. The new community can become an important component in the implementation of the overall metropolitan regional plan. By careful selection of development policies the new satellite community can also serve to alleviate some of the city's pressing urban problems, such as improving housing quality and creating new jobs. However, possibly the greatest potential lies in the very scale of planning available when an entire community is developed. Most American planning has been geared to small-scale developments, although there is some evidence of a change in the recent trend toward planned unit developments and new town construction.

Planning at the community scale encourages efficient, coordinated development of all the systems which make up a community—housing, circulation, recreation, education, commercial, and industrial facil-

9. PENAL FARM STUDY, at 7.

10. Because the Penal Farm Community is not a wholly independent city, it cannot be considered a new town and many of the problems facing new towns are not applicable. For example, the problem of controlling extraterritorial fringe development is not present.

ities.¹¹ The Penal Farm site offers all of these somewhat general potentials as well as a number of more specific ones. Perhaps the greatest asset of the property is the fact that it is presently owned by the public. This factor alone must excite the imagination of any planner. Today, opportunities for *public* development of planned communities are on core sites after they have been cleared of deteriorated structures although there has been discussion of developing such communities away from the edge of peripheral urban expansion.

Furthermore, the Penal Farm site is ideally located. It lies immediately east of the incorporated fringe of Memphis—an area already developing with quality single-family residences. Access to the site is excellent. It is bisected by Walnut Grove Road, a major east-west divided highway, and is bounded on the west by Interstate 240—the circumferential highway which in turn links up with Interstates 55 and 40. In addition to the surrounding arterial circulation network, Kirby, Whitten, and Germantown Roads, which run north and south, link the property to “Memphis East,” an area slated for annexation in 1970, and to the incorporated (but small) Village of Germantown. Both of these areas are experiencing increasing residential growth.¹² The design potential of the site is also substantial. The land varies from rolling hills in the northeast to a flat alluvial flood plain in the south and west. Along the southern boundary of the farm, the Wolf River creates a greenway along its natural drainage course that runs up to a number of small lakes in the northern part of the tract.

In addition to the unique qualities of the site, there are a number of encouraging factors which support satellite city development. Various population projections for the Memphis metropolitan area envision a continued population growth necessary to sustain the development of a satellite city on the Penal Farm. A present population of 540,000 is expected to increase to approximately 1.5 million by 1990.¹³ Memphis, as illustrated by a recent annexation study, is also aware of the necessity for programmed capital improvements to support subcity development.¹⁴ Annexation by the city and cooperative city-county

11. Mandelker, *A Legal Strategy for Urban Development*, in *PLANNING FOR A NATION OF CITIES* 209, 216 (S. Warner ed. 1966).

12. Interest in the western portion of the Penal Farm as a potential industrial park is again prevalent and the Planning Commission has scheduled a special study of this area.

13. *MEMPHIS-SHELBY COUNTY PLANNING COMM'N, ANNEXATION: A MUST FOR A GROWING MEMPHIS*, at 34 (1967).

14. *Id.*

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programs such as sewer extension in anticipation of municipal annexation have resulted in uniform excellence of public services and facilities. Careful budget projections for streets, sewers, fire protection, parks, and schools have now been made for additional areas, such as Memphis East, which are slated for early annexation. The annexation report clearly recognized the necessity for a special budget study if the subcity development on the Penal Farm was to be initiated.¹⁵

Memphis, unlike many other American cities, is organized on a geographic basis large enough to allow it to undertake the necessary planning and development decisions that creating a satellite city would require. In the past, through orderly annexation by the city, the Memphis area has achieved a relatively uncomplicated governmental structure. The state annexation statutes encourage metropolitan growth. They are permissive with respect to annexation and restrictive with respect to incorporation within five miles of existing cities. Municipalities, on their own initiative, may annex areas unilaterally whenever "the prosperity of such municipality [and territory to be annexed] . . . will [otherwise] be materially retarded and the safety and welfare of the inhabitants and property thereof endangered."¹⁶ The statutory framework strongly favors annexation. No independent court test is required to make annexation effective,¹⁷ and court review must be sought by objecting residents of the territory to be annexed.¹⁸ Court decisions on annexations by central cities in Tennessee have been favorable.¹⁹ Presumably, development of the Penal Farm will assure annexation of the area to the city.

The Penal Farm property possesses the basic ingredients for successful development of a subcity—long-range population growth, transportation accessibility, industrial potential, stable government, and provision for adequate municipal services. These factors were stressed in the Planning Commission report to the Shelby County Quarterly Court on the Penal Farm area.²⁰ Along with a general development

15. *Id.* at 29; *see also* PENAL FARM STUDY, at 15, which recommends that the required public services could best be provided by annexation of the area as it was developed.

16. TENN. CODE ANN. § 6-309 (Supp. 1955).

17. *Id.*

18. *Id.* § 6-310.

19. State *ex rel.* Robbins v. City of Jackson, 218 Tenn. 322, 403 S.W.2d 304 (1966); State *ex rel.* Senff v. Columbia, 208 Tenn. 59, 343 S.W.2d 888 (1961); Morton v. Johnson City, 206 Tenn. 411, 333 S.W.2d 924 (1960).

20. PENAL FARM STUDY *passim*.

recommendation, the report outlined in a broad manner a possible development plan and a suggested land-use allocation for the earlier stages of the project:²¹

Penal Farm (remaining)	1100
Community Center—regional shopping and high rise building	200
Residential non-high rise	1300
Education Center	200
Open Space	1500
Industrial	600
	4900 acres

The report was received by the Quarterly Court in June of 1966 without detailed comment or extensive discussion. Today, three and one-half years later, the property remains undeveloped. However, what was scattered suburban fringe nearby a few years ago is now rapidly filling in with low-density residential development. New rumors existed that the county was eyeing the property as a quick revenue source. Nevertheless, the planning staff was still hopeful that its recommendations for publicity-guided development of this unique community asset would be followed. A request from the County Court to draw up detailed plans for an industrial park in the western sector of the Penal Farm—an area pictured on the general development plan as industrial—was seen as a hopeful sign by some planning staff members.²²

Throughout discussion of the Penal Farm project the Planning Commission report emphasized that implementation of its general recommendations was both a critical and complex problem, yet little was written concerning implementation. The Commission's attitude from the outset was consistent—that responsibility for preparation of actual development and implementation plans in the broadest sense should be given to a project director working with a highly skilled team of experts, drawn from whatever disciplines were necessary.²³ The Penal Farm study, therefore, merely set the stage. It appears that

21. *Id.* at 13.

22. Interview with Robert M. Wilkinson, Director of Planning for Memphis and Shelby County, in Memphis, Tennessee, January 25, 1968.

23. PENAL FARM STUDY, at 15.

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the County Court has accepted the Planning Commission's recommendation. Recently, the Court solicited development proposals from selected planning consultants.

Clearly, the property will be developed within the next few years, the only question being how it will be accomplished and what the end product will be. This paper is premised on the assumption that sophisticated public initiative and control is the best possible approach for utilization of this exceptional public resource. Without a major public commitment to implementing the multiple centers concept, the future of the Penal Farm land is quite predictable. The existing middle-class suburban development to the west of the site will most likely spread further east. Possibly some shopping center facilities will be situated near the outer beltway to service the suburban population. The industrial park may also become a reality. However, the broad range of uses contemplated by the Planning Commission study probably will not occur. Simply zoning the property to allow high-rise commercial development, for example, and then disposing of the land to the highest bidder will assure neither the kind nor quality of development necessary to create a successful planned satellite city. The county and city must develop a carefully conceived implementation program to guide the type, quality, and pace of development, for as the Penal Farm study cautioned: "Once the opportunity to create the type of community as proposed is lost, it cannot be regained."²⁴

II. LEGAL AUTHORITY TO SELL THE PENAL FARM SITE

An initial issue is whether the county has the legal authority to alter or dispose of large amounts of the Penal Farm land. It is generally stated in municipal law treatises that when public property is no longer usable, or is inadequate for the purposes for which it was acquired, the municipality may dispose of the property.²⁵ However, this general rule does not provide a satisfactory answer for the Penal Farm. Unfortunately, there are no more specific statutory guidelines in Tennessee concerning the disposition of public lands, but the Tennessee case of *Azbill v. Lexington Manufacturing Company*²⁶ does shed some light on this issue. In this case the city, in hope of reducing unemployment in the area, leased a former school gym to a manufacturing concern and also agreed to construct a factory for the business on an

24. *Id.* at 16.

25. 3 C. ANTIEAU, MUNICIPAL CORPORATION LAW § 20.19 (3d ed. 1967).

26. 188 Tenn. 477, 483, 221 S.W.2d 522, 525 (1949).

adjoining lot. Although the court declared the agreement to build a new facility illegal, it approved the leasing provision.²⁷ The judicial test established by the court in *Azbill* is as follows:

The town having properly and legally acquired ownership of this realty and the use to which it had been devoted having been abandoned it had the authority either to sell this property or to rent it to a private concern. . . .²⁸

The question then becomes, has the Penal Farm been abandoned? A reasonable interpretation of the abandonment test might include a reduction in the scale of penal farm operations and the sale of the excess land. Courts have recently held that municipal housing authorities could sell excess land.²⁹ One such court decided:

If the city discovers that all of the land is not needed for the purpose for which the land was acquired, then the city need not continue to use all the land for that purpose. That part of the land which is not needed can be sold.³⁰

III. LEGAL CONTROLS OVER SALE AND DEVELOPMENT OF THE PENAL FARM

A. Sale To a Single Developer

This section will discuss two options for implementation of the Penal Farm community project, and some of the legal problems associated with these options. The first option contemplates development by a single community developer; the second contemplates sale and development by a series of smaller developers over a period of time.

One possible option for implementing the satellite city plan on the Penal Farm contemplates sale to a single giant builder of the community developer class. Although this approach might appear simple, a number of complex problems would be created—method of disposition, sales price, and development control.

Community builders most often seek three basic commitments from local governments: 1) authorization to create special districts to help

27. *Id.*

28. *Id.*

29. *See, e.g.,* *Vilbig v. Housing Authority of the City of Dallas*, 287 S.W.2d 323, 332 (Tex. Civ. App. 1956); *Dornan v. Philadelphia Housing Authority*, 331 Pa. 209, 228, 200 A. 834, 843 (1938).

30. *Vilbig v. Housing Authority of the City of Dallas*, 287 S.W.2d 323, 332 (Tex. Civ. App. 1956).

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finance the development, especially the community's infrastructure; 2) maximum influence over the siting of the transportation network; and 3) maximum freedom in zoning and subdivision regulations.³¹ The present Memphis utility system could easily accommodate this new development. Therefore, a special utility district would not be needed, although new projections would be required for future capital budgeting programs.³² A highway location problem does not exist, as the property is already well-situated as far as access to the highway network, and any internal circulation system could be in concert with the developer's plan. Zoning could best be handled by creating a special planned community district. The ordinance enacted by Fairfax County, Virginia, to aid the development of the new community of Reston might serve as a possible model.³³

Under the Reston ordinance, the County Board of Supervisors is authorized to create a planned residential district in accordance with its determination that a satellite city complies with its overall master plan.³⁴ The RPC District, as it is known, can be created upon application by the owner of a minimum of 750 acres of contiguous property.³⁵ A preliminary plan covering a minimum of 750 acres must be submitted by the applicant and be approved by the Plan Commission and the Board of Supervisors.³⁶ Before development can be started, final plans for a minimum of 100 acres must be approved by the Plan Commission. This final plan must show location of all buildings, parks, lot lines, open space, parking, schools, and recreation areas.³⁷ The developer must also submit proposed deeds of dedication with restrictions to preserve open space.³⁸ Although there are no specific regulations in the Reston ordinance concerning minimum lot size, minimum setback, minimum lot width, and maximum percentage of lot coverage, the RPC District does control overall project and resi-

31. E. P. EICHLER & M. KAPLAN, *THE COMMUNITY BUILDERS* 88 (1967).

32. *PENAL FARM STUDY*, at 14-15.

33. FAIRFAX COUNTY, VA., *ZONING CODE* § 30-2.22 (1967) formerly § 30.68.2 to which all further references will be made.

34. *Id.* § 68.2(b)(1).

35. *Id.*

36. Preliminary plans must include the proposed general layout, the general location of the various types of uses, the proposed densities of residential population, a major thoroughfare plan, a public utility plan, a storm drainage plan and a plan showing the location of recreation spaces, parks, schools and other public or community uses. *Id.* § 68.2(b)(2).

37. *Id.* § 68.2(b)(3).

38. *Id.*

dential density and permitted uses.³⁹ Once the final development plan is approved the builder may proceed, although he is bound to the approved plan unless an amendment is submitted and approved.⁴⁰

Unfortunately, the community builder approach is not presently possible in Memphis. Various government officials and developers in the area believe that this approach is not feasible.⁴¹ This attitude may be due to the fact that no local developer exists with the size, capital, or experience to undertake such a massive project. Possibly more important is the fact that the Memphis area, although a growing one, is not experiencing the explosive growth which has been the impetus for present new town developments in California or near Washington, D.C.⁴²

The attraction of this first approach lies in the flexibility for imaginative planning on the site and the limited public expense and commitment involved. The difficulties of detailed development planning and research, financing and marketing would be placed upon the private developer. These comments do not ignore the great capital expenses which would necessarily fall upon the public; sewerage, for example.

However, sale to a single developer will not necessarily result in the achievement of the goals of the Penal Farm study. Prompted by the necessity to build for the market, a community builder might find himself pushed toward providing the low-density development which so far has typified the Memphis suburban fringe. With no previous examples of mixed integrated development at higher and lower densities to encourage public response, the higher-density residential elements of the Penal Farm community may have to be shelved.⁴³ A decrease in population densities may also lead to an alteration of plans for the community shopping area. Actual public investment in the more controversial and innovative aspects of the Penal Farm project may be necessary in order to overcome initial market resistance.⁴⁴

39. *Id.* §§ 68.2(c)-(d).

40. *Id.* § 68.2(b)(3).

41. Interview with Members of the Memphis-Shelby Planning Staff in Memphis, Tennessee, January 25, 1968.

42. E. P. EICHLER, *supra* note 31, at 25 & 555.

43. The recent difficulties faced by Reston, Virginia, may continue to make developers wary of attempts to prevent "urban sprawl" by careful planning and increased densities. Most new communities to date have not contained densities higher than those of conventional suburbs. E. P. EICHLER, *supra* note 31, at 167.

44. Such activity might be carried on by a public development corporation similar to the British New Town corporations.

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B. Sale to a Series of Developers Over a Period of Time

1. *The Planning Problem*

Problems of implementing the Penal Farm project plan will be compounded, however, if, as seems necessary, the project land must be sold in smaller parcels to a series of developers over a period of time. If this method of land disposition is used, problems will arise in coordinating the plans of different developers, especially in timing and phasing the development of the project so that it will be carried out in an orderly sequence.⁴⁵

Urban renewal is a comparable developmental program which faces similar issues in the sale of project land in accordance with a development plan, and this program should be consulted for experience in public land disposition procedures which might be of aid in the construction of an appropriate legal framework for the sale of the Penal Farm property. This article will concentrate on methods for implementing the proposals of an urban renewal or new town project plan over a period of time, and on methods for meeting the problems of feedback from market response which may alter or change the initial plan proposals. However, preliminary to a discussion of these problems, some other difficulties in an adoption of the urban renewal land disposition process might be noted here.

Project planning, land acquisition, and land disposition in urban renewal is ordinarily carried out by a separately constituted public agency. Use of an independent local authority, however, creates legal confusions in the use of project plans which are complicated by the ambiguous role of the zoning ordinance as it applies to development in the urban renewal project area. Urban renewal plans gain legal recognition primarily as a basis for guiding land disposition policies in accordance with federal guidelines which are a prerequisite to receiving federal urban renewal assistance. These plans secure a legal basis under state law only when they are recorded as conventional subdivision plats with accompanying—and traditional—deed restrictions affecting the use of land within the urban renewal project. Unfortunately, the deed restriction is an unwieldy legal device for guiding the development of an urban renewal project, since deed restrictions are not easily nor readily altered when changes occur in the urban renewal project during the development process. In addition, the urban renewal program has not worked out a comfortable

45. Mandelker, *Some Policy Considerations in the Drafting of New Town Legislation*, 1965 WASH. U. L. Q. 171.

relationship between the urban renewal plan and the zoning ordinance. The zoning ordinance remains as another layer of legal authority governing the use and development of land in the project area.⁴⁶

Whether or not an independent authority is created to plan and dispose of the Penal Farm project area, legislation directed to the creation of a legal framework for the project can overcome some of these difficulties. It can provide, for example, that the plan as adopted for the Penal Farm area could serve as a zoning control much in the same way as application for, and approval of a planned unit development district substitutes for ordinary zoning control under some planned unit development ordinances. An approach of this kind, however, would require either the delegation of zoning power over the Penal Farm to the development authority, or approval of the Penal Farm plan as an independent zoning district by the county governing body.

Furthermore, if this method of public control over land use and land disposition in the Penal Farm area is adopted, a legal system must be constructed which will provide an adequate basis for public control over the project while at the same time reserving sufficient initiative for private developers who desire to build in the Penal Farm area. When the urban renewal experience is consulted, however, not much assistance is provided for developing such a method of legal control for a satellite community project on the Penal Farm model.

Traditional urban renewal planning has produced urban renewal plans which are a combination of diagrammatic land-use maps accompanied by land-use and density restrictions that echo the language of conventional zoning ordinances and deed restrictions. These plans have been found ineffective as a method of controlling the development of urban renewal projects. A recent study by Professor Roger Montgomery recounts how, in the redevelopment of the Gratiot area of Detroit, ". . . an intensive planning effort marked by continuous debate over the most abstruse points of neighborhood design produced no buildable result."⁴⁷ The Detroit Planning Commission's carefully developed scheme of land use maps and zoning-like restrictions on use, density, and building layout ran up against investor discontent even though site and architectural review was also provided. A sec-

46. Mandelker, *The Comprehensive Planning Requirement in Urban Renewal*, 116 U. PENN. L. REV. 25 (1967).

47. Montgomery, *Improving the Design Process in Urban Renewal*, 31 J. AM. INSTITUTE OF PLANNERS 7, 9 (1965).

ond effort at ready-made but static planning also met with little success.⁴⁸

The reaction to failures such as this one has produced an alternative approach which holds promise for the Memphis project. San Francisco's experiment in land disposition procedures initiated what Montgomery calls "comprehensive process planning."⁴⁹ Generally stated, the public agency after careful study produces a plan which serves either as a disposition yardstick with which to measure bidders alternative proposals, or as an actual development plan.

The components of the process are overlapping, but may be conceptualized in terms of the Penal Farm effort as three continuous tasks. The initial effort would be to explore the site's market potential and to develop a series of basic community goals such as providing a more varied housing mix, or creating more jobs. Along with these general goals, a set of criteria and procedures would be established as development and disposition guidelines. The criteria developed would be stated in a preliminary public plan. Permitted uses and density regulations, for example, would be spelled out. The plan would set forth what the public agency expects to do in order to implement the plan. At this stage, the plan does not specifically locate uses. It is open, flexible, and without legal effect. It is not an official document frozen by legislative adoption after public hearings.

The second stage would be more detailed. Planning is again incremental and over time can react to the market feedback to what has already become part of the project. At this stage, small scale design plans may be produced, possibly allocating land to industrial parks, high-rise office structures, and residential uses. What public improvements are to be built may also be outlined.⁵⁰

The third stage is the action phase. Implementary actions like public improvements and disposition to private developers who have submitted concrete proposals now begin. Bids are taken on sections of the project for which the more detailed, second-stage plans have been prepared. Proposals for development would be measured against the

48. A recent study of the urban renewal plans and end products in Nashville and St. Louis by Professor Mandelker substantiates Montgomery's earlier work. In both cities, the public agency lost the initiative. In addition, legal controls—zoning and deed restrictions—proved insufficient to enforce the original plan. See Mandelker, *supra* note 46, at 52, 63.

49. Montgomery, *supra* note 47, at 17.

50. For a discussion of an analogous procedure used by the British, see Mandelker, *A Legal Strategy for Urban Development in PLANNING FOR A NATION OF CITIES* 209 (S. Warner ed. 1966).

disposition criteria and preliminary design proposals which have been prepared for the project. However, developer proposals would not be rigidly bound by a static project plan. Successful proposals would be those which conformed most closely to basic project objectives. Development may follow the public plan, or the governing authority may select an alternative plan which meets or exceeds the public benchmark. The mechanisms selected for disposition, coordination, and development control are now actually put into operation.

Any peripheral expansion development on the Penal Farm site will be a time-consuming process. The comprehensive process planning mechanism, with its incremental, adaptive character, should be an excellent tool to use in organizing development while avoiding the pitfalls of static planning. The public agency will be free to react during the disposition and development phase to a continual flow of outside stimuli without the need to run to the governing body for amendments to a static master plan or to seek legal loopholes in order to permit development.

Use of a development and disposition procedure of this type will also provide a unitary and smoothly-functioning method of development control over the Penal Farm project. Much like the set of guidelines contained in a planned unit development zoning ordinance, the general project plan and the more detailed sectional plans can be adopted either by the independent development authority (if one is created) or by the county legislative body. Disposition and control over the development of the land can be carried out administratively, as can compliance procedures which follow up on developer performance. Once the project is completed, the end result is a series of publicly-approved developer plans, adopted in conformance with the disposition criteria for the development of the project, and which will serve henceforth as the basis for control over project uses and further development.

2. Legal Basis for Land Disposition

The method for public land disposal has traditionally been competitive bidding, and not negotiated disposition, although urban renewal agencies have not favored this approach.⁵¹ Neither Tennessee statutory nor case authority specifically deals with this question as it

51. Scheuer, Goldston & Sogg, *Dispositions of Urban Renewal Land—A Fundamental Problem in Rebuilding Our Cities*, 62 COLUM. L. REV. 959 (1962).

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applies to raw, publicly-owned land.⁵² However, the state legislature has given broad discretion to Tennessee urban renewal agencies⁵³ in selecting disposition methods, and competitive bidding is not required. Comparable statutory authority could be provided for the Penal Farm projects.

How would the courts react to the use of a process planning approach to land disposition, as contemplated for the Penal Farm project? A recent California case, *Old Town Development Corp. v. Urban Renewal Authority*,⁵⁴ dealt with the legality of the disposition of urban renewal land using a process planning approach which is similar to that proposed for the Memphis Penal Farm. In contrast to the satellite city proposal, the City of Monterrey did adopt an official renewal plan for the parcel in dispute. However, the municipality reserved the right to amend the plan upon the recommendation of the urban renewal agency. Furthermore, bidding for project land proceeded on the assumption that the developer could be guided by an alternative project plan. The invitation for proposals clearly stated that the agency would:

. . . dispose of the property for the established land uses in accordance with the [adopted redevelopment plan and restrictions recorded thereunder]. . . . In addition to the above, the *** Agency *** will consider proposals regarding the parcels set forth in Exhibit 'B' [the alternative plan], which disposal plan is more fully set forth in the invitation to bidders.⁵⁵

The "Developer's Packet" explained that, due to the possible construction of a depressed roadway, the adopted renewal plan might be amended. Developers were therefore invited to submit bids related to the adopted plan or in accordance with criteria stated in an alternative plan then under study by the agency.⁵⁶

The developer selected by the renewal authority only submitted a proposal in accordance with the generalized alternative plan.⁵⁷ Old Town Corporation argued that its own bid was the only qualified proposal as it was based on the adopted plan, and that submission of

52. *Azbill v. Lexington Manufacturing Company*, 188 Tenn. 477, 482, 221 S.W.2d 522, 525 (1949).

53. TENN. CODE ANN. § 13-816 (Supp. 1965).

54. 249 Cal. App. 2d 313, 57 Cal. Rptr. 426 (1967).

55. *Id.* at 319, 57 Cal. Rptr. at 432.

56. *Id.* at 320 n. 4, 57 Cal. Rptr. at 433 n. 4.

57. *Id.* at 316, 57 Cal. Rptr. at 429.

proposals based upon the alternative criteria was illegal, as was the contemplated disposition under the alternative plan.⁵⁸ The California court, after carefully reviewing the procedure used, upheld the disposition of the land under the alternative plan:

The "Invitation for Proposals" and "Developer's Packet" clearly indicated that [the agency] was contemplating exercising its discretion to so proceed; and that it would do so if the studies then undertaken, which presumably would include consideration of the proposals submitted under the alternative plan, reflected that there was sufficient economic and aesthetic benefit to the community to warrant such an amendment.⁵⁹

The court also concluded that, according to California statutory and case authority, the agency had the discretion to determine who was in fact a qualified developer. The court also held that the plaintiff had not exhausted his remedies since the Council had yet to approve the amendment necessary in order to dispose of the parcels.⁶⁰ However, the case stands as authority which supports the submission of bids on the basis of a plan which accords considerable discretion to the public agency in selecting a redeveloper.

A 1967 Iowa case, *Inn Operations Inc. v. River Hills Motor Inn Co.*,⁶¹ aids in developing a legal foundation for the process planning concept. Here, the court prevented the sale of renewal land when the city selected a developer whose bid again did not comply with the officially adopted plan or existing zoning. In contrast to *Old Town*, all the competing developers were not notified that the existing restrictions could be removed if necessary to their proposal. The Iowa court pointed to inside information about the possibility of amendment which the winning bidder had, and said that there must be a common pattern or foundation for bidding before it would approve the sale of the renewal property.

3. Land Disposition and Pricing Policy

Developing a policy for the sale of land in the Penal Farm project area also presents difficult problems. Selection of the bidder offering the highest possible price for the land may defeat the objectives of the development plan, since the bidder may have to turn to development

58. *Id.* at 317, 57 Cal. Rptr. at 430.

59. *Id.* at 324, 57 Cal. Rptr. at 437.

60. *Id.* at 325, 57 Cal. Rptr. at 438.

61. 152 N.W.2d 808 (Iowa 1967).

not contemplated by the plan in order to realize enough of a price on his completed product to recoup his expenditure for the undeveloped tract as raw land. Furthermore, the price to be paid for the undeveloped tract reflects, in a direct way, the densities, type, and character of development which is to be allowed on the plot.

A public agency wishing to ease its selection problems may attempt to restrict the developers who are allowed to build in a new community project like the Penal Farm. Under one method, bidders would be required to prequalify on the basis of such factors as their experience and financial capacity. Possibly, other criteria could be adopted for prequalification, such as the character of the developer (profit v. nonprofit), its policies toward racial integration, and other factors affecting the achievement of the project plan objectives. As an alternative, the public agency may retain a considerable discretion in the selection of the successful bidder once bids have been taken. A recent New Jersey case, *Ott v. Town of West New York*,⁶² although also arising in an urban renewal context, suggests that an agency disposing of land in the Penal Farm project area might have considerable discretion in selecting developers on the basis of the goals of the development plan.

In this case, the court approved the sale of renewal land to the bidder who had offered the lowest price for the land.⁶³ The price received was above the minimum value established by the renewal agency and the agency decided that the winning developer's plan for middle income housing best met the needs of the community. While upholding the disposition, the court cautioned the agency and suggested what it thought might be a better procedure. The agency should, in addition to setting a minimum price, clearly state what type of housing and rental it felt the community needed, and then invite developers to submit plans.⁶⁴ This procedure closely parallels the process planning mechanism devised for the Penal Farm project. In addition, the New Jersey court refused to review the agency's minimum land price, or its view of public need.⁶⁵

Setting the price level for project land is another important consideration. Property within the new community has unique qualities which will directly affect its value and sale price. The special public

62. 92 N.J. Super. 184, 222 A.2d 541 (1966).

63. *Id.*

64. *Id.* at 199, 222 A.2d at 551.

65. *Id.* For a hypothetical discussion of the problem, see D. MANDELKER, *MANAGING OUR URBAN ENVIRONMENT* 721 (1966).

controls and benefits associated with the development of a large-scale planned community—higher densities, better public facilities, and improved design—make it difficult to use comparable prices from the open market. These factors, negative and positive, will be reflected in the price, rapidity of sale (whether the land sells at all), and the quality of development.⁶⁶ Value must be established in accordance with these factors and the goals of the community. Possibly a two-price system will be the best method. Such a system would allow the public to recapture in its sales to private developers, the increment in value due to the public's development controls and improvements.⁶⁷ Sales to public bodies, or for public uses, such as public housing, could be at a write-down in order to encourage such projects.⁶⁸ Surely there would have to be a careful allocation of uses in order to prevent destructive competition between public and private developers.

An additional and quite controversial pricing question relates to the power of the public agency to prevent speculation in satellite community property. A recent report on the creation of a new town in Kentucky stresses the necessity to control land speculation, especially in land for housing.⁶⁹ The report proposes that the power to develop land for resale should include the power to specify re-sale price, thus restricting developers to a reasonable profit. In support of this suggestion the author cites controls which exist in the Hawaiian Oahu Land Development and Albertan New Town Programs.⁷⁰ However, the present American urban renewal program does not include this type of control, and there is every indication that a restriction of this sort would be difficult to administer and would meet with great developer resistance.⁷¹

IV. CONCLUSION

It is hoped that this article has given further impetus to the idea of developing the Penal Farm as a satellite community. An attempt has been made in this case study to explore the often neglected, yet

66. Cf. Brownfield, *The Disposition Problem in Urban Renewal*, 25 LAW & CONTEMP. PROB. 732 (1960).

67. Mandelker, *Controlling Land Values in Areas of Rapid Urban Expansion*, 12 U.C.L.A. L. REV. 732, 758 (1965).

68. *Id.* at 759.

69. SPINDLETOP RESEARCH INC., A SPECIAL REPORT OF THE ANALYSIS OF ALTERNATIVE INSTITUTIONAL STRUCTURES FOR IMPLEMENTING THE DEVELOPMENT OF AN URBAN CENTER AT MIDLAND, KENTUCKY (1967).

70. *Id.* at 37.

71. Mandelker, *supra* note 67, at 759.

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critical, problem of implementation of the planner's objectives. Clearly, if programs such as the Penal Farm subcity are undertaken, the legal and governmental systems must be made flexible enough to accommodate completing such developments.

The process planning technique may offer a means of organizing the public-private effort which the Memphis project requires. However, the presentation of this technique in this article is not meant to slight the difficult problems which this method creates for public agencies. Methods of implementation like process planning, which accord considerable discretion to public officials, must be firmly exercised if initiative is not to slip too far to the private developer. Nevertheless, the special tools suggested may enable the Memphis community to realize the potential of its unique public resource. The Memphis project will be viewed as an experiment in public planning; its results will bear watching as American communities attempt to handle the expansion of our urban areas.

