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AMERICAN SOCIETY OF PLANNING OFFICIALS

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Information Report No. 160 **July 1962**

NEW TECHNIQUES FOR SHAPING URBAN EXPANSION

Within the past year or so, several new techniques for controlling and guiding urban expansion have been initiated and still other new techniques have been proposed. The very fact that innovations are being tried or suggested indicates that all is not well with present techniques.

We are not satisfied with the operation of conventional planning and development controls now. But the impact of urban expansion in the near future makes the situation even more dismaying. A population increase on the order of 100 million persons within the next 30 years, all to be housed, employed, entertained in urban areas. Urban renewal needs in the magnitude of one trillion dollars. It is little wonder that the adequacy of our techniques for shaping urban environment are being examined with a jaundiced eye.

This report[1] attempts to assume an objective, if negative, viewpoint on the "ideal" pattern for urban development. We believe that in one place or another in the United States, many forms of urban development will be tried out. Some will be successful while others will not. But we doubt that success or failure is inherent in any particular form.

The mix of housing between private single-family dwellings and multi-family structures we assume will remain about the same as we have had during the past few years. This may be considered a meaningless statement since the 1955 figure of 8.4 per cent of the housing starts in multi-family units had increased by 1961 to 26.3 per cent. George Cline Smith, the construction industry economic specialist, estimates that the 1962 proportion may run as high as 40 per cent.[2] The point is, however, that we assume there will be a mix of the two dwelling

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[1]This report is based on a paper prepared for the Housing and Home Finance Agency by Dennis O'Harrow. The paper was delivered at the Conference on the Problems and Needs of Urban Expansion, held in Washington, D. C., June 7-9, 1962. It has been adapted for this report with the permission of HHFA.

[2]From a speech given at the convention of the National Sand and Gravel Association, Chicago, Feb. 6, 1962.

types and that both will be significant. The relative importance of either type may make some difference in the weight assigned to one or another technique of government control, but it will not alter the need for a variety pack of controls. Multi-family structures will be mainly in-town, calling for redevelopment devices; single-family houses will be suburban and require related techniques.

Shortcomings of Conventional Techniques

Before discussing new techniques, we will briefly review some of the faults in conventional techniques.

A basic weakness of present land use control techniques is an inadequacy to handle development on the modern scale. Subdivision regulations were conceived to regulate the layout of individual lots, upon each one of which an individual owner would build his unique house. Zoning ordinances were designed to control the use of each single lot that the subdivider laid out. These two types of regulations have been carried forward with a minimum of change from the days of little construction -- the days before tract housing, shopping centers, and industrial parks. The zoning and subdivision ordinances themselves are out of scale, their administration is out of scale, even picayunish, when they try to cope with today's mass building and construction methods.

The present-day regulations have also tended in practice to fix maxima where it was intended to fix minima. For example, when subdivision regulations call for a minimum of 7,200 square feet in a lot, this becomes the maximum that the developer will lay out. He will even complain that the regulations are "too rigid," that they do not allow him enough leeway. Actually, of course, the regulations are not rigid. The developer has the option of putting in lots at any size he wishes so long as that size is not smaller than 7,200 square feet. He is free to put in 10,000-square-foot lots, 15,000-square-foot lots, 1-acre lots. Nevertheless, the regulations have tended to stereotype development, producing whole developments of identical lots -- all of the minimum size.

The land use controls of today have been ineffective as techniques to preserve those assets we wish to keep, or to carry out a predetermined pattern of land use. After more than a half-century of experience, the conventional master plan is accepted by a legislature so rarely that it becomes top news in planning when one is followed. Faced with the forces of the market, zoning districts and regulations have given way, have been unable to withstand onslaughts by the land speculator and the merchant builder.

The present techniques have been particularly ineffective in securing metropolitan coordination, in getting local governmental bodies to give any heed to regional repercussions of their acts.

A grave weakness in present techniques is a lack of method to maintain continued concern and responsibility for urban developments. The merchant builder will build an isolated, unbalanced residential project that is unable to support itself. Then he runs out, leaving the individual buyers to hold the bag, to try desperately to make a viable community when the makings are not there. This is in contrast to the shopping center promoter or the industrial park

promoter who, because of his unliquidated financial investment, continues to maintain standards and to police covenant restrictions.

There is also a continuity-of-interest problem in urban renewal. In the redevelopment process, it occurs in the complete letdown of interest in the project once the contract has been signed. It also comes in the difficulty of assuring, on the part of the city, continuity of outlook and a maintenance of zoning standards in rehabilitation areas.

Another problem is the difficulty of maintaining an over-view by all government agencies of the entire urban situation so that all programs are coordinated, so that the benefits of one action are not negated by another action. For example, a successful rehabilitation program may perpetuate an obsolete pattern that should be discarded. Aids to suburban development may hasten the deterioration of the central city. There is reason to believe that if all central business district rehabilitation were to be achieved to the limit of the CBD boosters' dreams, we should be building a Frankenstein's monster.

The difference between a new technique and an improvement on an old technique is difficult to define. In any case, new techniques have inevitably been foreshadowed by existing techniques in the field. For example, the write-down on urban redevelopment land is subsidized at two-thirds or three-fourths by federal funds. If the proportion were shifted up to 100 per cent federal subsidy, we would have a new technique for shaping urban development, although it would have been foreshadowed by an earlier technique.

Ways to Change Techniques

There are a number of ways that techniques can be changed. Some of these are:

Federal -- Local Agency. Present urban-shaping techniques are in the hands of several governments. The controls can be shifted up or down the line. We can have more or less federal intervention, more or less state intervention, more or less metropolitan or regional intervention, more or less local intervention. Zoning, for example, is completely in the hands of local communities. It could be shifted to a metropolitan agency or, as recently proposed in Wisconsin for areas around interchanges, to a state board. Local planning assistance projects are financed by a mixture of federal and local funds in some areas, by a mixture of federal, state, and local funds in other areas. These arrangements can be changed, the division of costs shifted.

Incentive -- Prohibition. There is a continuum in the method of guiding development that runs from incentives, offered to a private developer to encourage him to follow a chosen course, to laws prohibiting the developer from doing something considered undesirable. If a developer follows certain standards of construction, design, layout, the federal government through FHA insures the mortgages, which makes them readily marketable, and makes sales easier. The local government prohibits the developer from building unless he supplies both public water and sanitary sewers. The range of incentives and regulations is wide. In some instances, one or the other seems to be the only possible method. In other instances, it is a matter of judgment whether incentive or regulation will be most effective.

Regulation -- Acquisition. Those who would shape urban growth must decide between guiding development by using regulation (under the police power), and guiding it by the more positive and certain acquisition of the fee or some lesser interest in property (eminent domain). This decision must necessarily be influenced by considerations of feasibility -- (is it possible to get the necessary control through the police power?); questions of finance (is the government able to afford the purchase of land?); and questions of politics (will the temper of the electorate permit condemnation and government ownership?).

Public -- Private. Practically all urban development is a mixture of public and private operation. Through one or more government controls or programs, the public is always involved in urban expansion. With the exception of certain public projects, private persons or private industry are also always involved in urban expansion. There is a continuing problem of determining at what point the public interest takes precedence over private rights. The balance between public and private varies from place to place and from time to time, but the long-time trend is for the public interest to become more and more determinant of the outcome. There is a parallel partnership between public and private sources for financing urban development.

Control -- Free Market. The whole gamut of urban development control techniques is a collection of methods of government intervention in the free market of real estate. How far this manipulation of the market should go is a question that will probably be answered in political terms. There is no chance of the one extreme: complete abandonment of market intervention by the government. This would certainly lead to anarchy and chaos in the urban scene. It is more likely that we will move steadily the other way, toward increased control and manipulation of the market through many governmental techniques and devices. Such manipulation may be direct (housing code enforement); other may be indirect (tax penalties on slums).

NEW TECHNIQUES IN URBAN DEVELOPMENT GUIDES

We have divided the possible new techniques -- or the improved version of older techniques -- into seven categories. Admittedly, the differentiation between types is not always clear and any one technique may fall into two or more categories. We believe, however, that the division aids in canvassing the field. The degree of detail of the discussion is variable. We would also point out that in several instances we had to invent terminology.

1. Plans and Programs. It is generally believed that if we are to attempt to shape urban growth intelligently we need a clear picture of the ultimate shape we wish to achieve. Traditionally this picture has been the master plan.

During the past several years, prodded by the HHFA 701 local planning assistance programs, we have increased our stock of master plans enormously. At the same time it is doubtful that there is much correlation between the production or number of master plans and their actual use. For most large cities they do not exist, for most small cities they are not used.

The most hopeful outlook for a usable master plan, or master plan substitute,

is the document which consists of policy statements, which has little or no specificity, no maps. This has been called, instead of a master plan, a community development policy. An important feature of the proposal for a community development policy is that it will be formally adopted by the local legislative body, giving it the status of a law, or as Professor Haar has termed it, an "impermanent constitution," but with slightly more permanence than his designation would imply. This action would be in contrast to the traditional master plan procedure, in which the master plan is rarely adopted by the local legislature. The traditional master plan, because of its specificity, has proved a nuisance and a handicap in those few places in which it has been formally adopted. Strong caveats against adoption abound in planning literature. Formal legislative adoption of the community development policy version of the master plan will be a sharp break with tradition.

The community renewal program falls somewhere between an existing technique and a new technique. It is being carried out in a number of cities as a result of the offer of federal funds to finance it. But completed community renewal programs are too rare and too new to give us information as to their effectiveness. There is evidence that the planners will for some time be experimenting with several approaches to the design of a community renewal program.

However, if we assume the objective of the community renewal program is valid, i.e., a technique to fill the interstices in the master plan, tied in with a program including method of financing -- then we should consider a further step. On the basis of area covered and persons cared for, the greater part of future urban expansion will take place in the fringe areas of cities, beyond the reach of the community renewal program, which is thus far confined to the already-developed city. Because of this restriction, it might be well to consider extending the CRP concept into the undeveloped areas of metropolitan regions, where we might call it a community or metropolitan development program.

Community renewal program and metropolitan development program seem also to be appropriate as the transition documents between a highly generalized community development policy mentioned above and the actual projects or the more specific guides and programs described later.

The current surge of interest in urban growth on the part of engineers and sanitarians, which has resulted in the creation of a new field of "environmental engineering" and "environmental health," may bring emphasis on community facility capacity. This is the concept that in any area there is an absolute limit to the capacity of certain community facilities to serve urban development, and that this capacity limit can be accurately measured.

The critical facilities will certainly be, at first, water supply and sanitary waste disposal. The capacity of any facility could change. For example, there would be one development limit so long as an area could be served only with septic tanks, but this limit would be greatly increased with the installation of sanitary sewers.

Air supply is one important community resource for which definite capacity limits will eventually be established. The current research in Los Angeles on the capacity of the atmosphere for disposal of airborne wastes clearly

points toward this type of control. The concept of capacity limits may be some day extended to such community facilities as schools, hospitals, or streets.

The idea of community facility capacity has been implicit in most reputable master plans. The difference suggested here is that with the birth of "environmental engineering," the idea is now in the bailiwick of engineers -- who are accustomed to working with enough precision so that they feel quite sure of themselves -- and of health service technicians -- who are accustomed to establishing and administering the very strong control measures permissible under the powers given to health agencies. As the "environmental engineering" or "environmental health" concept gains strength and funds, there could be a dramatic shift in the agencies and personnel administering development controls.

2. Regulatory Measures. Most of the techniques discussed in this paper are regulatory measures in some degree. However, we use this classification to discuss only zoning limitations.

Conventional zoning has been unable to deal with urban projects on the scale we have seen them for the past decade. Zoning, with its precise measurements and standards, is a tool designed for the individual lot. It is most effective, for example, in guiding "in-filling," as the British term it -- construction on and use of the vacant lot that lies in the middle of an already-developed area. Zoning can be particularly useful to maintain the amenity of an historical preservation area.

However, zoning has not been effective as a means to preserve the integrity of the land use plan for an undeveloped area. Nor has it been effective to control and yet to allow reasonable freedom to the builders of shopping centers, industrial parks, large residential projects, or balanced community developments.

Whether done formally or not, the trend is toward the limitation of zoning to developed areas and small parcels. Instead of designating undeveloped fringe land as "agriculture," or limiting it with extra large "estate" zoning, we can expect the use of an "uncommitted" zone designation. The legislative body would say: "We have not determined the proper use of this land. You may continue to use it as you now use it, but when you want to change the use, you must come to us with your proposal for a permanent zone designation. At that time we will hear you and grant or refuse your request." Hopefully, the legislative decision would be guided by a rational land use policy and plan.

Once the classification is fixed and development has taken place, then conventional zoning would take over maintenance of control of land uses.

3. Licensing Measures. Professor Charles Haar in a paper (to be published) given at the 1962 Resources for the Future Forum points out the widespread shift of zoning controls to a type of licensing procedure. He attributes this to a demand for flexibility. In the preliminary draft of his paper, Professor Haar has the following to say:

> One pervasive and important tendency in zoning is toward greater flexibility.... /An aspect of this tendency/ is the greater use of licensing techniques relative to the self-executing statute. Thus the number of special uses, admissible in specific districts, but only upon the discretionary grant of an application for a permit,

has risen over the years. Thus, too, the newer device of flexible zoning or floating zones -- the creation of districts which instead of being mapped in advance are delineated by amendment upon petition or application -- has gained rapidly in popularity.

The increase of licensing is a fact. It is bewailed regularly and at great length by the pioneers of zoning, but their objections seem to have no effect in slowing the trend. In addition to licensing through special exceptions and floating zones, the modern zoning ordinance and the modern subdivision regulation will both contain provisions for "large-scale" or "planned" developments. Under these provisions, the developer presents his scheme of development, a scheme that need not necessarily adhere to standard provisions for lot size, yards and setbacks, use segregation, building type, etc. The one control customarily maintained is that of over-all density of development. If the scheme as presented meets with the approval of the reviewing body (which may be the board of zoning appeals, the plan commission, or the legislative body), the developer is given permission, is "licensed," to go ahead with construction. Since the end of World War II, the economics of construction have called for larger and larger development operations. Such large-scale developments cannot be accommodated to the typical picayunish zoning and subdivision rules. We can be certain that the philosophy of "licensing" will continue to gain favor.

Another type of licensing, which also is offensive to the purists in zoning, is the free-and-easy rezoning by the local legislative body. In fact, in many areas where the local legislature has been inclined to be reluctant to change zoning classifications too easily, the courts have taken over and ordered reclassification.

In the days before large-scale construction, there was a clear distinction between the functions of the zoning ordinance and the subdivision regulation. With the rise of the merchant builder who controls the development operation all the way from buying the raw land to selling the finished house, the distinction is lost. This melding together of zoning and subdivision control is particularly apparent in the floating zone and the large-scale development provisions of the two types of ordinances. Although no model has yet been produced, we can be sure that shortly the distinction between these two, zoning and subdivision regulation, at least as far as new development is concerned, will be lost and there will be a widespread use of the development ordinance. It is probable that the development ordinance will go beyond a combination of zoning and subdivision control in fringe areas to embrace the full zoning ordinance for developed areas. Eventually, there may be a possibility that the development ordinance will also include the community building code and housing code.

4. Land Acquisition. The acquisition of land for public purposes, in advance of need, has from the beginning been a desired end-product of planning. The object is to get properly located parcels of land for parks and streets, for schools and other public buildings, in advance of need. Land can be bought at a time when the cost will be lower than if purchase were delayed until the land is actually needed. For example, in 1959 the City of Cincinnati reported that as a result of a 1948 master plan, land for four parks had been purchased well in advance of need. The city had saved approximately 2 million dollars by virtue of advance acquisition.

In general, communities have the legal authority they need for the advance purchase of land, although they are frequently short of the necessary funds to make such purchases. There is also reluctance on the part of the city officials to commit the city irrevocably to a scheme far in advance of the time the scheme can be carried out. In part this is due to the lack of a long-range plan of development or to the lack of understanding of the need to follow such a plan, if one exists. It is also due to an understandable lack of faith in the ability of any public officials, including -- perhaps, especially -- planners, to foresee the future with any reasonable degree of certainty.

A technique that, like the community renewal program, falls somewhere between the "old" and "new" is the purchase of interests in land less than the fee simple title for open space purposes. These interests are known variously as "development rights," "scenic easements," and "conservation easements." In 1962, laws to permit this type of purchase by local communities were in effect in California, Maryland, New York and New Jersey. In the first three of these states, the purchase may be made only with the consent of the owner. The Green Acres Act of New Jersey permits the community to acquire the land by eminent domain.

The object of the purchase of development rights is to give the local community the unquestioned right to prohibit intensive development of open areas. Supposedly, it can be done at a lower cost than if the community were to purchase the land outright. Also, the prohibition against development will be done in a manner more palatable and more fair to the landowner than if the right to develop had been taken by zoning or some other ordinance under the police power. The various enabling statutes to permit the purchase of development rights are still too new to make possible a fair judgment of their effectiveness. There seems to be considerable disappointment on the part of planners and conservationists who fostered these acts because they have not been picked up and used more widely by the communities.

An interesting variation on development rights purchase has been recently proposed by two faculty members of the University of Pennsylvania Law School. This is discussed later under "Metropolitan Development Commission."

The land acquisition mentioned at the beginning of this section related to land for public purposes. The development rights program can be used to assure permanent open space in expanding urban areas, which would be considered a public purpose (morally if not legally); or it can be used for development timing, for restraining development of an area until the community is in a position to furnish the necessary municipal services. If the purpose is development timing, then, the land is slated for eventual private use rather than for public use. As recently as a dozen years ago, such an idea would have been politically unacceptable and impossible to carry out legally. In the past decade because of the pressure of expanding population, particularly on schools, there has been a shift in the political and juridical philosophy to a more liberal viewpoint. There has also been definite legislative action, plus a reasonable assurance that courts would look favorably on government purchase of land eventually to be resold for private development. It is no longer treasonable to comment favorably on the Scandinavian practice by which cities own not only the developing fringe lands, but also large areas within the built-up city. The universally cited example in the United States of a similar situation is Mountain Lakes Borough in New Jersey. The borough itself owns 35 per cent of its entire

area, and sells it for private development only as rapidly as the borough officials feel their government is able to finance the public costs of private expansion.

A suggested instrument for handling property to assure properly timed development is the land bank. Land is purchased by the community and held in the land bank until such time as it is ready for development. The proper time to release the land from the land bank can be determined by the community, as mentioned before. It will be when the community is ready and able to accept the responsibility and cost of serving the property after it is developed. Or, what may be more important in some cases, the land is held in the land bank until the market is ready to absorb it for the purpose which the community has determined it should be used. This latter situation is particularly important for the preservation of outlying industrial land. A master plan may determine that a particular outlying parcel is both suitable and needed for industrial growth. However, at the time the plan is made there is no market for the parcel as industrial property. Under existing laws and court decisions, it will be almost impossible to freeze the parcel for exclusive industrial development, so long as it remains in private ownership. The owner will claim violation of due process. The courts will almost certainly support him if regulations freezing his land for industrial development prevent him from selling it for any other purpose.

The land bank can also be used to hold areas cleared through redevelopment. A substantial and growing proportion of redevelopment clearance areas (whether or not the clearance has actually taken place) are proving to be unsaleable at present. Naturally, the areas most attractive for private rebuilding will be cleared first because they can be resold easily. Areas for which no developer can be found will remain uncleared or, if cleared, will remain unused. The land bank can be a useful device for handling this problem.

5. Recapture of Betterment. The value of land in the environs of a city is enhanced by public acts. A new expressway, a new school, the extension of water and sewer facilities -- all of these will increase the value of land in the vicinity. However, none of the increase in value will be returned directly to the local community which paid for the improvements that caused the increase. The only way in which part of the "betterment" value is recaptured for the public is through the federal capital gains tax -- if the property is sold. And this tax goes to the federal government rather than to the local government.

The British government has tried by the use of development charges to collect some of the socially created increment. This has not proved particularly successful. The land bank mentioned in the preceding section could be used to recapture betterment. To do this, the community would simply buy property at one price and sell it later at a higher price, with the government taking the profit.

An extension of this idea would be for the government itself to redevelop clearance sites, the profits from which would eventually reduce the costs of clearance. As well as being a method to recapture betterment, this redevelopment by government agency may be the only way that certain submarginal sites can ever be redeveloped.

An older technique for the recapture of betterment is excess condemnation.

There has been no widespread use of excess condemnation, partly because it has not fared well in many state courts, and partly because the name has a bad ring -- it is a politically dangerous tool. The idea, nevertheless, has particular merit as a means to protect expressway interchanges. The public investment in an interchange structure can be seriously depreciated unless there is positive control of land use and access to the interchange for some distance in all directions. Such control is most positively assured if the government actually purchases the adjacent land. Protection does not mean complete absence of any use. Certain selected and carefully controlled operations can be placed in an interchange area, preferably on the basis of ground lease. The enhancement in value of land because of the intersection would in this way accrue to the public.

In 1961, it should be noted that a bill was introduced in the Wisconsin Assembly under the short title of "State Trunk Highway Interchange Protection Law." Under this law the state would take authority and zone the intersection area if that area was not zoned properly by a municipality or county. The bill was defeated, but it probably will be introduced again. It is questionable, however, whether zoning alone could ever assure the degree of protection at a highway interchange that is desirable or that could be gained through protective purchase.

6. Financial Incentives. Perhaps more important in the shaping of urban areas than any program, ordinance, or control that has been discussed thus far are financial incentives. The federal government is, by all odds, the most important purveyor of financial incentives. It operates through FHA and VA mortgage insurance, FNMA mortgage purchase, the depressed areas program, urban renewal grants, community facility loans, public housing grants, open space grants, public transit aid, and -- although completely beyond the scope of this paper -- the national fiscal policy.

It is also beyond the scope of this paper to discuss the subtleties of this financial incentive program. A few points might be made, however.

In private residential development, the most important financial factor is the FHA mortgage insurance program. It is suggested that FHA might well examine its policy on approving developments that have sandbagged zoning changes, that are contrary to local land use plans, that have leapfrogged existing development too far, or that will clearly make an excessive drain on the community's ability to provide urban services. The reverse of this situation also might merit favorable treatment from FHA (and from VA) -- a situation in which the development was clearly lining up with a community development program or master plan.

A few students of urban renewal advocate the abolition of non-cash contributions as a credit from the local public agency. It is stated that the whole situation would be better, even if the federal write-down were increased to 80 or 90 per cent, with the local contribution of 10 or 20 per cent being demanded in cash. It is difficult to calculate the pros and cons of this proposal, but it seems worth investigating.

In passing, it is suggested that the HHFA 701 local planning assistance program might well be improved if there was a requirement that the state contribute something to the cost. It is widely recognized that several states in the 701 program are treating their part purely as a bookkeeping and procuring

operation to help snag more federal funds.

The Pittsburgh ACTION-Housing program for the East Hills project is based on financing development from a revolving fund, plus direction of the operation by a quasi-public corporation dedicated to the public interest. This is a model that should be studied closely. It seems to offer a possible method to assure continuity of interest in a private residential development. It may be an effective way to fight the hit-and-run developer, who caters to the same lower middle income group that the East Hills project will serve.

In the general field of land use planning and control (other than construction and development) the federal government has embarked on a program of aiding local communities to purchase open space, or to purchase development rights to maintain open space. This is a still untried technique -- it was first authorized in the 1961 version of the Federal Housing Act. If the open space program is taken up with any enthusiasm, it can play an important part in shaping future urban developments. The open space program is necessarily a metropolitan program. Because of this, a major obstacle to its complete success is the scarcity of metropolitan planning of value or effectiveness. All in all, the program is still experimental. After three to five years' experience, the open space program should be re-examined to see whether the total appropriation is adequate and whether the subsidy percentage, 20 per cent and 30 per cent, is proper. It may be found that, even with the federal subsidy, local governments will not to any great extent be financially able to take advantage of the program.

7. Tax Assessment Policy. Property tax policy is important in shaping urban growth. The tax payment as it relates to the true value of land is important in determining whether the land can be held for a speculative rise. An important factor is the policy of the assessor on weighting the zoning classification of property. Shall he assess at the value for the use permitted by the zoning classification, perhaps agriculture; or shall he assess at the value for urban development, for development into tract housing? The general practice of assessors has been to ignore the zoning classification, except where mandated differently by state statute. They have adopted a realistic, if blasé, attitude that zoning ordinances were only temporary deterrents.

The most important current proposal in property taxation is the use of the land tax or site value tax. Under the land tax, only the land is assessed -- never the improvements on it. However, the land is assessed at its highest use value. The tax rate for the taxing jurisdiction is adjusted so that the total property tax income will be the same as under the customary land-and-improvements tax scheme. This is actually Henry George's single tax, although the present-day advocates seem to want to soft-pedal this origin.

A study made in Burnaby, British Columbia, indicates that the land tax would be effective to secure optimum development on property. It is claimed that the land tax would make it unprofitable to hold land for speculation. It is also believed that the land tax would go far to induce private owners to improve or clear slums and blighted property. The Canadian League of Mayors and Municipalities has endorsed the land tax and petitioned the federal government for permission to use it generally. While the evidence seems convincing that it would be a desirable tax reform it is unlikely that the land tax will be adopted in the United States until American local officials have had a

chance to observe how it works in Canada.

Under any circumstances, a rational assessment policy would be helpful in guiding a rational urban development policy. In cities where the assessed value of property is extremely low, perhaps as low as 5 per cent of the true value, the city is badly handicapped because of a lack of bonding power. The full effectiveness of any federal programs for shaping urban development will certainly be lost in such low assessment areas.

A major problem in fringe area development has been the financing of schools and parks for new suburban development. A number of local communities have attempted to meet the problem by requiring that the developer dedicate land for school and park purposes, or by charging him a fee in lieu of dedication. In two states, New York and California, the state legislature has authorized such practices. However, courts in the majority of the states where the question has arisen have declared park and school site dedication requirements or payments-in-lieu to be illegal.

A suggested solution for this problem is the use of a school or park benefit district. This would operate under the customary laws governing other benefit districts which are financed on the basis of special assessment against property owners in the district. Streets, sewers and drainage improvements are quite generally financed in this way.

The operation of a hypothetical school benefit district: The community delineates the service area of a proposed school. The plan states that a school will eventually be built somewhere near the center of this area, a school to serve 500 families. The cost of the land and the building is being set at $100,000. A benefit district is formed. Each dwelling unit to be built in the district will carry a special assessment of $200, perhaps payable over a period as long as 10 years. The period of the assessment starts running when property is subdivided into lots or when house construction is started. Construction on the school will start when the school authorities consider development has gone far enough to warrant building. If the cost of the school is more than was raised by the benefit district charges, the community undertakes to make up the difference. If more than 500 dwelling units are built in the district, each would still pay the $200 special assessment on the theory that more than 500 families will require a school larger than was originally planned.

NEW TECHNIQUES IN ADMINISTRATION

Thus far we have passed over the problems of administering the land development techniques that we have listed. There follows a brief discussion of new, or improved, administrative techniques and agencies. It is felt that these are important in themselves, whether or not there are substantive changes in the actual development incentives and controls.

1. Department of Urban Development. There has been more than a little criticism of urban redevelopment because of "projectitis" -- the craze to get something torn down and something new to replace it, regardless of whether the project fitted into a rational development plan. In particular, since slum clear-

ance has been basic to redevelopment policy, projectitis has caused double and triple relocation of families as one slum area after another is torn down, and the residents are pushed from pillar to post.

The cause of projectitis can be localized in the gap between the philosophy of urban renewal, an action program, and a philosophy of planning, which avoids any contact with action. The cure has been to amalgamate the two into a single department of urban development.

In some cities, full responsibility for urban renewal has been assigned to the planning department from the start, sometimes with no change of name for the department. In other cities, the change has been made only after some experience with separate agencies. Well-known examples of combination after experience with separate agencies are the departments in Boston, Milwaukee and Berkeley.

Some planners are concerned as to which agency will dominate in a merger, or perhaps, which former director will be head man in the new agency. At present the score is about tied, but there are signs that the top agency will be the one that was strongest before the merger -- a trend that may go hard with some bumbling planning departments. The top man will be the one who is the strongest administrator, which has further implications for the profession of planning that need not be explored here.

As an organization form, the department of urban development is getting more popular. For example, in the spring of 1962, such departments were set up as the initial organization for both planning and urban renewal in three major suburbs of Chicago. We have not had enough experience with this type of organization to know how effective it will be. It augurs well, however, as a means to get a more rational renewal program and a more realistic community plan.

2. Development Control Agency. Professor Haar has pointed out the distrust that has been aroused by the switch to "licensing" type procedures in the administration of zoning. He speaks here of distrust by the courts and the possible effect of the "community development policy" discussed earlier.

> The /Pennsylvania/ court was quite obviously concerned with several species of possible unfairness which might result from the Gwynedd /floating zone/ ordinance. Among others it saw a danger of discriminatory administration in the application procedure and a danger of incompetent administration in the bypassing of an "expert" body.... Many judicial fears on this score can be allayed by the master plan. Of course, if the master plan for the area is locational, its usefulness for this purpose will be limited. If, however, it consists of applicable principles and relevant goals which are to guide the subsequent districting in a way which can be understood by the court, its existence may prove decisive. It would be evidence that the zones though not fixed were nevertheless a result of planning. It would be evidence of a sufficient guide for and limitation on administrative discretion. It would furnish a guide for judicial review.
>
> In order to perform this function, the master plan would almost certainly also have to bear in some form the imprimatur of the local legislative body.

In spite of the fears of excessive discretionary powers, there can be little doubt that we shall have an ever-increasing use of the licensing philosophy in the administration of land development controls. A most promising suggestion for handling this problem is the development control agency.[3] The agency will be analogous to the federal regulatory commissions: Interstate Commerce Commission, Federal Communications Commission, Federal Aviation Agency, etc. It would be under the direction of perhaps three full-time commissioners, persons with expertise in planning, law, real estate, public administration, construction, or similar fields, who would administer a development ordinance -- a combination of zoning, subdivision control, and large-scale development control ordinances. The agency would be guided by a community development policy, rather than a conventional master plan, although the commissioners would also be guided by any detailed program, such as a community facility plan.

The agency would: (a) replace the board of zoning appeals and the zoning administrator; (b) take over the plan commission functions relating to zoning and subdivision regulations; (c) replace any architectural review board; and (d) have delegated to it legislative authority to establish zoning regulations and delineate use districts, under the guidance of general policy laid down by the legislative body.

It will be noted that this proposal is in line with the implications of the quotation from Professor Haar above.

An important aspect of local regulation of urban expansion is that local government is regulating an industry, the home building industry, in addition to regulating land use in the public interest. An attitude that balances concern with the public interest and understanding of the industry problems is more likely to be found in a full-time regulatory commission such as the development control agency than it is in the congeries of lay boards and commissions that now administer a mishmash of ordinances, plans, programs, and personal prejudices.

It is also believed that the development control agency can be most effective if it has metropolitan or sub-metropolitan jurisdiction.

3. Superior Review Boards. There are being proposed, more frequently in the past few years, metropolitan or state boards for review of local decisions on land use regulations. The proposals call for review, either automatically or upon appeal, of local board of adjustment rulings on variances and special exceptions and planning commission decisions on subdivision control. Some proposals even call for automatic review of local legislative action on zoning amendments or on original zoning and subdivision control ordinances.

The chances are good that superior review boards will be established in some states. The pressure for such boards will be coming principally from the real estate and home-building industries, whose operators are alarmed by behavior they consider irresponsible and discriminatory, and by policies clearly inconsistent with related policies in adjacent communities. The home builders get

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[3] A better name might have been selected, but an attempt was made to differentiate clearly between this proposal and the Krasnowiecki-Paul "Metropolitan Development Commission," discussed later.

some support from planners and expert zoning lawyers, who are especially alarmed by the chaotic administration of land use controls in metropolitan areas.

As yet the only metropolitan board of zoning appeals in the United States is in Marion County (Indianapolis), Indiana. There is no state board of review; the advocates of this type of agency cite the Ontario Municipal Board as a model.

4. State Planning Agency. While state planning can hardly be called a new technique, there is a current revival of interest that may make it an important factor in shaping future urban growth.

State planning has been dead since the abolition of the National Resources Planning Board. In fact, there are legitimate doubts that state planning ever amounted to anything even under the NRPB aegis. However, there is definitely a return of interest in state planning at present.

The interest has been triggered by the state plan of Hawaii, probably the first true state plan ever to be completed; and by the strong interest of Governor Nelson of Wisconsin, who has given state planning top priority in his whole administrative program. As a result of this interest, a special report on state planning was prepared by the American Society of Planning Officials for the Council of State Governments. This report was presented at the 1962 Governors Conference, and its recommendations were endorsed by the Conference.

A principal thesis of the Governors Conference report is that urban and metropolitan growth (and decay) will be the number one state problem in the coming years. It is urged that state governments take positive steps toward meeting this problem, by using state planning and by taking definite action to ease the metropolitan situation. It is not possible now to say how widely the recommendations of the report will be embraced. They will certainly not be unanimously adopted in all states. At the same time, it seems reasonable to expect that in some of the more populous states such as New York, California, Pennsylvania, and New Jersey, state government will move into the urban situation strongly.

It is also not possible to predict what form state intervention will take. The state zoning in Hawaii indicates that some extremely powerful steps can be taken. For example, under Hawaiian state zoning, the limits of urbanization are definitely controlled. The state-controlled land use pattern has resemblance to the British green belt and "white area" scheme.

5. Suburban Development District. In an article appearing in the May 1960 issue of the Journal of the American Institute of Planners, Marion Clawson proposed a new form of organization which he called the suburban development district. Clawson's proposal was to surround and enclose the city with a series of ad hoc districts, distantly modeled after drainage districts. He would give the districts the power to levy taxes, to borrow, to buy and sell land, and in general, the power to "perform any function ordinarily performed by local units of the government, including such matters as provision of water supply, sewage disposal, fire-fighting organization, schools, parks, roads and streets, and the like." The major power he denied the district was that of eminent domain. The district limits were to follow natural or artificial boundaries in some sort of logical fashion. A district would contain from one to ten or more

square miles, the size varying to some extent directly with the size of the city surrounded.

The basic power of the suburban development district would come from an authorization to acquire all the land within its boundaries, if necessary. Clawson felt that complete purchase would not be necessary, but that most of the land could be controlled by options, voluntarily given. (Where necessary, the state was to condemn property or property rights for the district.)

The major activities of the suburban development district were: (1) to plan urban growth of the district, as needed; (2) to acquire control over the land area by purchase or option to the extent necessary; (3) to enter into contracts for actual development of area, at optimum rate, with private developer; and (4) to undertake, either in its own name or by contract with local government units, to supply necessary local governmental activities.

Six interest groups were to be represented on the control board of the suburban development district: counties, special local governmental districts, neighboring city or cities, private real estate developers and builders, present landowners in the district, and leading citizens of the general area. These various interest groups were to be "permitted to subscribe from ten to twenty-five shares of 'stock' each." How this "stock sale" was to be arranged was not clear.

There have been some sharp criticisms of Clawson's proposal. One of the most serious would be that the additional governmental units only increase the balkanization of metropolitan areas. While it is not likely that the suburban development district exactly as Clawson proposes it will be adopted, the proposal does have some pertinent suggestions to offer as a method of administering a land acquisition program.

6. Metropolitan Development Commission. In the December 1961 issue of the University of Pennsylvania Law Review (Vol. 110, p. 179), there appeared an article by Jan Z. Krasnowiecki and James C. N. Paul entitled "The Preservation of Open Space in Metropolitan Areas." In this article, the authors propose the establishment of "metropolitan development commissions" and they offer a tentative draft of an open space act to use this device. The proposal has attracted a great deal of attention.

The device is too complicated to discuss in detail in this report. However, it is generally an adaptation and, according to the authors, an improvement over the British scheme of nationalization of development rights. (This aspect of the British system has not been particularly successful.)

The authors described the system as follows:

> 1. When the area to be preserved or developed for open space purposes has been chosen, through procedures and within a governmental structure which best assure maximum benefit to the community, the properties in the area are valued.
> 2. The valuation is based on the same principles and is accomplished under the same procedures as is the valuation of property for purposes of just compensation in condemnation.
> 3. The values thus established for each property in the area

are guaranteed to the owner by the government authority.

4. The aggregate of these guarantees for the whole area is equal to the compensation which would be payable if the whole area were condemned in fee on the date when the open space program goes into effect.

5. The fee, of course, is not condemned.

6. Instead, detailed regulations controlling the uses of the property for open space purposes are imposed against the guarantees.

7. To the extent that such controls depress the value of the land for uses actually being made of it at the time they are being imposed, the owner is permitted to draw on his guarantee for damages.

8. To the extent that such controls depress the value of the property for other than existing uses -- depress or eliminate development worth -- the owner may draw on his guarantee through an administratively supervised public sale of his property, in an amount by which the guarantee allocable to his interest exceeds the proceeds received by him from the sale.

9. The guarantee established for any property in the area is reduced by each payment of damages or compensation. Thus the damages and compensation payable by the community cannot exceed the guarantee established for each tract. What this means, in effect, is that development values not existing on the date when open space controls are imposed are not compensated.

The proposal is ingenious, particularly in view of the probability that the natural long-term rise in suburban property prices would minimize the need for ever actually paying any money for the development rights. While full criticism of the proposal has not yet been heard, one critic suggests that the danger of the metropolitan development commission scheme is that the principle behind it, once accepted, might be extended to already built-up property, instead of being confined to open space control. Under these circumstances, even if the proposal surmounted constitutional objections, there would be great opportunities for discriminatory treatment of similarly situated landowners.

7. Metropolitan Government. A realistic appraisal of the situation in the United States indicates that true metropolitan government has little chance of being widely adopted in the reasonably near future. Metropolitan cooperative agreements, such as the Inter-County Supervisors Committee in the Detroit region, may be successful in some areas. The Association of Bay Area Governments, a similar organization, has had difficulty in getting started, even with the blessings of state enabling legislation. Some city-county consolidation may take place, and some county governments may be modernized enough to handle urban problems (several are so equipped now).

As some of the problems, such as water supply or sewage disposal, get critical enough, we can expect additional ad hoc metropolitan authorities to take over these specific functions.

On the whole, however, the outlook is not bright for any radical or widespread breakthrough in administrative organization to meet metropolitan problems for the next ten years or so. This leaves metropolitan planning as the only administrative device which does have fairly wide acceptance. The history of metropolitan planning gives us nothing to be particularly pleased about. The most successful metropolitan planning has been in small metropolitan areas

where the urbanized area is enclosed within the boundaries of a single county. In these areas, there are several variations of the city-county joint planning operation which have been reasonably successful. Where the metropolitan area includes several counties or spills over into more than one state, the record is not encouraging.

This is essentially a negative report on metropolitan government and metropolitan administration, but it is a situation that should be reckoned with when considering the problems of shaping future urban expansion. The awakening of state interest in metropolitan problems (mentioned in connection with state planning) offers some encouragement. Other techniques discussed in this report are also essentially directed toward remedying the problems of metropolitanism.

8. The Federal Role. The federal government will probably play an increasingly important role in shaping urban expansion. If for no other reason, this can be inferred from the safe prediction that federal grants-in-aid, subsidies, and loans to local agencies involved in urban development will continue to increase.

The most directly involved, the most influential federal agency, will continue to be the Housing and Home Finance Agency or its successor. Even if the successor is labeled as a "department of urban affairs," it can be assumed that a number of federal programs, quite important in shaping the urban future, will still be administered by other departments.

It will always be an important responsibility of HHFA, or its successor, to work for coordination of all programs affecting urban development. The cooperation between FHA and the Federal Aviation Agency on the policy for mortgage insurance on property in the vicinity of airports is an illustration of the coordinated approach. Current liaison between URA and the Bureau of Public Roads is another illustration. A prospective program, federal aid for school construction, promises to be an extremely important factor in shaping urban growth. Unthinking disbursement of school construction aid funds can undo a great deal of work that both federal and local agencies have done over the past fifteen years.

In addition to the direct influence of federal financial incentives on urban development, the federal agencies are influential in the rules and standards set to qualify local agencies for federal assistance. It is always difficult to decide how far the federal government should go with its rules and regulations, since this strongly smacks of intervention in local affairs. There must be a compromise between the need to protect the federal funds and the need to preserve local autonomy.

The seven-point "workable program" is an illustration of the type of federal requirement that can strongly influence local policy. The workable program has done much to improve the quality of local operations in the field of urban renewal and planning. At the same time, it has not been perfect. There has been relatively little review of the quality of the various elements involved. It is generally recognized that some communities do no more than pay lip service to workable program requirements.

There is need for expanding the "workable program" concept to include a judgment of the quality, balance and completeness of the arsenal of local develop-

ment control techniques.

In fact, the good work of one control device, such as zoning, can be completely offset by the harm done by another device, for example, the assessment policy. It is suggested that there should be a method of making an objective survey to analyze and evaluate all aspects of city ordinances or city policy that have an effect on urban development. If such an analysis could be presented impartially, it would be useful to aid local government to inaugurate an integrated program to improve its tools for shaping urban development. And, of course, such improvement of tools would benefit the federal programs for the area.

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