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Peter J. Winders

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NOTES

Land Use Planning for Industrial Development

I. INTRODUCTION

During the last thirty years, state and local governments have increasingly engaged in activities designed to attract industries to locate within their borders.¹ Local governments are concerned with broadening their tax bases to support the cost of supplying an increasing demand for public services.² State and local governments are desirous of creating a healthy, well-balanced area economy to increase the general well-being and to eliminate social expenses³ inherent in an underdeveloped area economy. As a general proposition, industrial development tends to cure problems caused by the underemployment of the resources of an area.⁴

Governmental units have employed several approaches to the attraction of industry. The most important of these involves the imperfect knowledge which entrepreneurs have of the supply market for plant sites. A business will theoretically locate at that geographic point at which maximum profits can be made. Given a price at which all its product will be purchased, other things being equal, a business

1. See GILMORE, *DEVELOPING THE "LITTLE" ECONOMIES* 27-48 (1960).

2. See Schmandt, *Municipal Control of Urban Expansion*, 29 *FORDHAM L. REV.* 637-38 (1961) [hereinafter cited as Schmandt, *Municipal Control*].

3. *E.g.*, if the underdevelopment of resources is such that there is an incentive for the population to leave the area for one with better economic opportunities, the political unit has borne the cost of such services as education without benefitting from the increased productive capacity such services impart.

4. The resources of an area include the productive capacity of its people, its land, its sources of power, and raw materials for various finished products. In addition, a geographic area has a monopolistic status with respect to its topography and location, and sometimes in its proximity to water transportation facilities and relevant geographic markets.

"A recent study by the United States Chamber of Commerce revealed how some effects [of industrialization on a community] can be stated in statistical averages. One hundred new factory workers mean 296 more people in a community, 112 more households, 51 more school children, 174 more workers in other businesses, 107 more passenger cars registered, four more retail establishments, \$590,000 more in total personal income per year, \$270,000 more in bank deposits, and \$360,000 more in retail sales per year." Waidehlich & Sayer, *Coordinating Industrial Development with Community Growth*, 98 *TRUSTS & ESTATES* 380, 381 (1959). This general discussion should not be taken as an espousal of the view that any industrial relocation automatically raises the general level of well-being in a community. Some industries will yield more benefit to the community than others, and some may have negative effects. *E.g.*, consider the case in which an unstable industry locates in a town and later fails or relocates; the original location may lure in additional laborers, so that the net result is an increased unemployment problem. See generally Sufirin, *The Tax Incentives and Industrial Location*, 10 *SYRACUSE L. REV.* 21, 28-29 (1958).

will choose to locate its physical plant at the point where the overall cost of producing and marketing its product will be lowest. However, several factors impede optimum long range locational choices by private industry. One of these factors is lack of information as to the existence and profit-relevant features of all available plant sites.⁵ It would be impracticable if not impossible for each firm itself to undertake to survey all the relevant factors of all possible plant sites before deciding where to locate.⁶ By shifting to itself the burden of research and evaluation of geographic and political factors, and by bringing the results of its investigations to industry, the political unit can bring its own available industrial sites into competition with those sites already known to the industry. Since the industry does not possess perfect knowledge of all factors at all available sites, the political unit is able to take advantage of the industry's lack of knowledge of more desirable sites in other jurisdictions.⁷

5. See generally BARNETT, AN ANALYSIS OF STATE INDUSTRIAL DEVELOPMENT PROGRAMS IN THE THIRTEEN SOUTHERN STATES 54-59 (University of Tennessee School of Business Administration, Bureau of Research, Study No. 13, 1944).

Another factor is the difficulty in disinvestment in a plant in a less than optimum location. See generally BACHMURA, IMPACT OF DEVELOPMENT COMMISSIONS ON ECONOMIC GROWTH IN THE SOUTH (United States Department of Agriculture, Economic Research Service, Farm Economics Division Feb. 7, 1962).

6. Geographic location of a business or industry may have considerable effect on the profits realizable on a given operation, primarily by its effects on cost of production and marketing. Proximity to labor markets, to raw materials markets, to markets for the end product, ease of transportation to and from these markets, and climate, all may be relatively fixed. Other factors associated with a geographic area also affect production costs: *e.g.*, prevailing standard of living, cost of living, expertise of labor force, prevailing wage rates. When the geographic area is a political unit, tax structure, services provided, and other factors may also affect profits. See Sufrin, *supra* note 4, for a discussion of the weight given by industry to various profit-relevant and other factors in deciding on geographic location.

7. Thus, the more imperfect the knowledge of geographic and political advantages attendant to plant sites in other areas, the more fruitful the political unit will find informing industries of the advantages of the sites available within its borders; industry must make decisions on the basis of information available to it.

As competing jurisdictions bring to the attention of industry the desirable features of available plant sites, a more perfect market situation develops. By selecting an industry which it wishes to attract and concentrating its research on the geographic factors relevant to the needs of the particular industry, a political unit can pursue further the approach of remedying an imperfect market and taking advantage of less perfect knowledge in competing jurisdictions. By keeping informed of new industries and new industrial techniques which depend to some extent on geographic factors, a political unit can continue to use this method of industry attraction even with increased competition from others using the same method. However, as competition increases among the political units, more research and information will be required to obtain the same results. Also, as the governmental units provide more information to industry, the cost to industry of independent complementary research will be lessened, and the advantage which one jurisdiction gains by supplying information not available in another will be minimized. See generally BARNETT, *op. cit. supra* note 5, at 55-60. This discussion is engaged in at this point because the information gathered under this common type of program will be useful as raw material for long range planning, discussed in section II.

Governmental units employ several additional approaches to the goal of attracting industry. These include: (1) increasing the attractiveness of the profit-motive appeal of available plant sites, *e.g.*, providing better transportation and additional service facilities;⁸ (2) increasing the attractiveness of relevant non-economic inducements which entrepreneurs consider in addition to the profit potential of a geographic location;⁹ (3) educating the people within its jurisdiction as to the desirability of optimum utilization of resources, and encouraging private action directed toward the attraction of industry.¹⁰

II. PLANNING FOR INDUSTRIAL DEVELOPMENT

A. *Inventory and Evaluation of Resources*

If industry is confronted with a relatively perfect knowledge situation with respect to both economic and non-economic factors affecting the desirability of potential plant sites, the most desirable of these sites should be utilized within a relatively short time, taking into consideration impediments to disinvestment in existing facilities. The

8. The proximity of a plant site to resource and distribution markets, which is an extremely important factor in attracting industry, is more than a matter of distance. Efficient and inexpensive transportation to and from the point of processing is necessary. An isolated untapped mineral resource is not very attractive to an industry interested in a supply of the material which is readily accessible by existing rail and water transportation facilities. Certain plants will have minimum demands for water and waste disposal facilities and will therefore be attracted to communities which can satisfy these demands. Adequate police and fire protection must be supplied by the industry itself if the community services are inadequate. Zoning may be important to an industry which contemplates future physical expansions. See BARNETT, *op. cit. supra* note 5, at 59; Waidelich & Sayer, *supra* note 4, at 380.

9. The persons responsible for deciding where to locate a plant will be accustomed to or seeking a certain standard of living. The personal interests of the decision-makers and their families will certainly have some effect on the selection of the area in which they will live and work. Adequate schools, adequate housing, available recreation and cultural facilities, and civic pride will have their effect, as will the services provided. The profit motive may well govern a locational decision, other things being equal, but some effort must be directed toward making those other things equal. The desirability of the community as a place to live and work may well be translated into profit considerations, since the community in which a plant is located can be an important factor in recruiting competent managerial, scientific and other highly skilled personnel. Also, there is evidence that the quality of the community is correlated with the amount of labor trouble experienced by industries within the community, though the causal connections in this phenomenon are not conclusively explained. See Sufrin, *supra* note 4, at 24.

10. Entities other than political units are interested in attracting industry. Railroads and other utilities are interested in new industrial customers. Merchants and financial institutions are interested in building the economy of their communities. See GILMORE, *op. cit. supra* note 1, 91-172. By working with such groups and by informing such people of the reasons and methods for attracting industry, the political unit can enlist the aid of many capable persons in its efforts. Responsible persons in the local communities can supply part of the information needed by the state agencies. Local leaders will do most of the work in improving services and generally improving the community, and they are largely responsible for the community's attitude toward new industry.

most desirable sites will naturally be utilized first, since incentive to disinvest in a less profitable location will be greater (if the industry is relocating) and since the prospective profits from investment in such sites are relatively high.

The attraction of industry through the method of improving industry's knowledge of profit-relevant factors of the resources of the political unit necessarily involves an inventory of those resources. An evaluation of the resources shown by such an inventory will undoubtedly show that some potential industrial locations are more desirable than others. Some areas will be found which have some important assets but which presently lack others essential to their profitable use. Other areas will have resources which are not presently of such quality that it is commercially feasible to exploit them. However, as the more desirable areas are developed and the supply of desirable plant sites is decreased, the demand for the less advantageous sites will increase, unless there is a decline in the economy. In addition, if new industry is attracted to the better sites and brings with it an increased population and greater purchasing power, the new markets thus created and the increased labor supply may well render plant sites formerly sub-marginal economically desirable. The preservation of such sub-marginal sites for future development and the orderly improvement of such sites in order to make them available and competitive when the economy of the area has developed sufficiently that sites and resources in the area are in demand requires long range planning.

Planning on the municipal and county level for the purpose of making the community a desirable place to live is vital if that factor in the attraction of industry is to have its maximum effect, and coordination between industrial attraction programs and local community planning programs seems essential if both are to be as effective as possible. Local officials must be cognizant of the projected needs of the community with a view toward the increased concentration of population anticipated from industrial development when planning for schools, housing, transportation, health facilities, sewerage, water supply, police and fire protection, transportation, and land use.

As pointed out above, the basic step to effective planning for industrial development is the collection of information about the resources of the area. This conveniently coincides with the earliest steps in attracting industry without a view to comprehensive long-range planning.¹¹ Once the resources of the area are inventoried, their potential use must be evaluated. Projections of growing population centers should be evaluated in terms of new labor and products

11. See text following note 4 *supra*.

markets; new industries should be evaluated as sources of supply and demand for other industries; raw materials sources presently marginal should be evaluated by projecting the depletion of better quality sources elsewhere.

The inventory process will itself be a complicated problem. The cooperation of private concerns should be of considerable assistance. Once the initial inventories are made, they must be constantly revised and reevaluated as the program of attracting industry achieves its successes; new industry is a new resource which should be given its place in the inventory, and which should also be a factor in reevaluating the projections based on the inventory.¹²

As the evaluations and projections are made, various planning decisions may be based on them. Development of the area's resources to achieve the best balance between the economic and social needs of its people should be the goal of long range planning. If this is to be accomplished, some control over the use of land and some control over the timing of the development of land must be exercised.¹³ The possible methods of implementing policy decisions as to the optimum use of land for industrial purposes is the subject of the remainder of this paper.

B. Zoning and Related Devices

Zoning is the implementation of a land use plan through a series of land use restrictions imposed under the police power. The zoning power is generally exercised by a unit of local government under a delegation of power from the legislature. Thus, the zoning power is limited by the terms of the delegation—the enabling legislation—as well as by the limits of the police power. The police power, as generally defined, extends to providing for the health, safety, morals, and general welfare of the public. Although the earlier zoning cases exclude the consideration of the “general welfare” as anything other than an incorporation of the terms “health, safety, and morals,” some of the more recent cases have given “general welfare” a separate

12. The projections made on the basis of the process of research, inventory and evaluation of the current resources of an area may be of importance not only as a guide to planning but also as a part of the information to be presented to desirable industries who may have plans, current or long range, for relocation. If the cost of disinvestment may be planned for by industry, it may be minimized; if future economic conditions may be predicted, an industry may chart an advantageous course so as to anticipate market and other demands. New and existing industry also may be a factor in which an industry interested in relocating will be interested, either as a source of supply or market or as an indication of the business climate of the area. See Waidelech & Sayer, *supra* note 4, at 382.

13. Also some planning and control over the choice of the particular industry which wishes to establish at a particular site may be necessary if the optimum benefit to the area is to be realized from the use of the site. See note 4 *supra*.

meaning.¹⁴ With respect to the preservation of land for industry, most cases have refused to enforce provisions setting aside a zone for exclusively industrial use.¹⁵ The earlier view was that the function of zoning was to protect residential districts from encroachment by industrial and commercial enterprises which reduce the fitness of neighboring land for residential purposes.¹⁶ That this was the original purpose of zoning is illustrated by the common zoning scheme of pyramiding or comprehensive uses.¹⁷ Zoning ordinances to protect available industrial sites from encroachment by residential or commercial uses were held invalid until quite recently;¹⁸ not until 1959¹⁹ did the first case hold that exclusive industrial zoning for the orderly development of a balanced community was valid as furthering the "general welfare."²⁰

The police power is limited by the due process and equal protection clauses of the federal constitution and by similar provisions of the constitutions of the states.²¹ Arguments that the provisions of a particular zoning ordinance are invalid have been phrased in such terms as "arbitrary," "confiscatory," or "discriminatory," but most cases seem to amount to an inquiry into the reasonableness of the application of the ordinance to the particular property involved.²²

The problem of preserving property for industrial use has been particularly acute in growing suburban communities.²³ Since the demand for residential property in outlying districts of large metropolitan areas is great, there is strong pressure on landowners to subdivide for residential purposes. Residential subdivision of outlying land places on the community a sizable burden in providing services; this burden is harder to bear if the intervening property is not fully

14. 1 RATHKOPF, ZONING AND PLANNING 2-13 (3d ed. 1962) [hereinafter cited as RATHKOPF].

15. Schmandt, *Municipal Control* 642-43.

16. *Id.* at 642.

17. The common pyramiding or comprehensive use scheme permits in "low use" zones (*e.g.*, commercial and industrial) any of the "higher uses" (*e.g.*, residential) but excludes lower uses from higher use zones. See *ibid.*

18. *Id.* at 643. See *Roney v. Board of Supervisors*, 138 Cal. App. 2d 740, 292 P.2d 529 (Dist. Ct. App. 1956).

19. Schmandt, *Municipal Control* 643-44.

20. *People ex rel. Skokie Town House Builders, Inc. v. Village of Morton Grove*, 16 Ill. 2d 183, 157 N.E.2d 33 (1959).

21. 1 RATHKOPF 3-14. "The question of the constitutionality of local ordinances under state constitutions, both generally and in the relationship of the particular ordinance to particular property under particular conditions existing at the time of the litigation is always present, and is, in its latter aspect, the chief ground of zoning litigation." 1 RATHKOPF 4-2.

22. *Id.* at 4-2 to -4-6. "While occasionally an ordinance may appear, on its face, to offend, usually it must be considered in relation to the circumstances of the particular case." *Ibid.*

23. See generally Schmandt, *Municipal Control*.

developed, therefore not contributing appreciable revenues to the fund which supports the extension of services. Since industry will generally provide in revenue two or three times the cost of providing services for it, compared with the loss involved in providing services to most residential property,²⁴ suburban communities have felt the need to attract industry to provide a broadened tax base. The desire to broaden the tax base and the desire to ensure orderly development of land in the closest proximity to the established portion of the community before outlying areas are developed have caused these communities to utilize the zoning power in several ways to control the development of the community.

1. *Zoning for Exclusively Industrial Purposes.*—As discussed above, recent cases have upheld zoning ordinances which exclude commercial and residential uses from an industrial zone.²⁵ This represents a recognition on the part of these courts that the attraction of industry and the preservation of industrial sites to ensure a balanced community growth is in furtherance of the "general welfare." The broadening of the tax base is not a relevant consideration according to some cases,²⁶ although other cases have held that the promotion of thrift and efficiency in public financing is an appropriate and relevant consideration.²⁷

Although exclusive industrial zoning has been upheld in communities in which the demand for sites by industry is reasonably high, *i.e.*, where the land is readily marketable for industrial use, it seems doubtful whether exclusive industrial zoning will be useful as a means of preserving industrial sites for a demand which is merely anticipated in the long run.²⁸ In those areas where potential industrial sites are presently sub-marginal for industrial use, zoning exclusively for industrial purposes would effectively preclude any use of the land for an indefinite time, and would probably be held to amount to an unlawful taking without compensation. Although a zone permitting both agricultural and industrial use might be valid or uncontested while agriculture remains the optimum use to which the land may be put,²⁹ if the demand for residential purposes arises before any

24. *Id.* at 651.

25. See, *e.g.*, *People ex rel. Skokie Town House Builders, Inc. v. Village of Morton Grove*, *supra* note 20.

26. See 1 RATHKORH at 10-1 to -5.

27. See, *e.g.*, *United States ex rel. TVA v. Welch*, 327 U.S. 546 (1946); *Newark Milk & Cream Co. v. Township of Parsipany-Troy Hills*, 47 N.J. Super. 306 (Super. Ct. 1957); 1 RATHKORH 10-5 to -10.

28. "[I]f the incursion into private property rights is sufficiently great the ordinance will be held confiscatory irrespective of any corresponding gain to the public. This result ensues when the ordinance restricts property to uses for which it is not reasonably adapted." 1 RATHKORH 6-6.

29. See Schmandt, *Municipal Control* at 652, 653. See generally Note, 12 STAN. L. REV. 638, 640-42 (1960).

reasonable prospect of industrial use, the same objections could be raised, especially if there is no scarcity of agricultural land, and even more if the development of the surrounding area makes the land in question unsuitable for agriculture.

2. *"High Use" Zoning in Outlying Areas.*—This device has been used to discourage the development of outlying areas until intervening lands are fully developed.³⁰ If development may be discouraged until the prospect of demand for industrial sites becomes reasonably great, exclusive industrial zoning may be employed in the undeveloped areas without damaging existing investments, and hence will not be challengeable as an unreasonable departure from the existing character of the area. A zone permitting both high residential and industrial uses would discourage both subdividers and large private residences, but this classification might be held unreasonable, depending on the development of surrounding areas.³¹ However, if the industrial uses permitted in such a zone are regulated by high performance standards the classification would not seem unreasonable, and the tendency to discourage residential development may still be rather great. The effectiveness of these methods depends on when the anticipated demand for industrial property arises relative to the demand for the property for other uses, and although effective for encouraging the full development of intermediate lands, these devices do not seem effective for preserving land and resources for industrial use.

3. *Performance Zoning and Floating Zones.*—Performance zoning involves the restriction of the use to which land is put on the basis of such objective criteria as the amount of noise or smoke, etc., emitted by the use rather than by naming the specific uses which will be permitted in the geometrically defined area.³² This method provides greater flexibility in the uses permitted and greater ease of administration, provided the criteria imposed by the zoning ordinance are easily measurable. Performance zoning in an area predominantly residential would leave the necessary flexibility for allowing the use of land for a "clean" industrial plant—one which would not interfere with the enjoyment of adjoining property.

This floating zone concept involves superimposing a so-called "floating zone" for designated uses with designated performance standards on one or more areas already zoned by the common Euclidian method.³³ On application of a property owner who wants to use his land

30. See Schmandt, *Municipal Control* at 652, 653.

31. For cases holding unreasonable large minimum lot site restrictions, and for the factors considered in determining reasonableness, see 1 РАТКОФН 34-9 to -11.

32. See generally Schmandt, *Municipal Control* 642, 644.

33. See generally Reno, *Non-Euclidian Zoning: The Use of the Floating Zone*, 23 MD. L. REV. 105 (1963).

for a purpose allowed by the floating zone ordinance but not by the Euclidian zoning scheme, an ordinance may be passed rezoning the property to allow the use applied for, *i.e.*, causing the floating zone to "descend" upon the applicant's property.³⁴

The floating zone idea has come about with the legislative realization that sound planning requires commercial facilities convenient to residential areas, and with the realization that industrial uses which are relatively unobjectionable on the grounds of interference with nearby residences are desirable assets to the community. Although commercial and industrial uses are desired in a developing area, the problem remains of encouraging and attracting persons to develop particular land for the desired purposes.³⁵ The floating zone device permits the desired uses on approval of an individual's plans by the legislative body, but leaves to the private developer the choice of location and time to commence the project.³⁶ Performance standards designed to protect neighboring property are set out in the original ordinance creating the floating zone, so the objection that the ordinance allowing the particular application is "spot zoning" is theoretically met. Of the four courts³⁷ which have considered the floating zone device, one held the device invalid.³⁸

The floating zone and performance zoning add new flexibility to the

34. For example, the zoning ordinance of the Town of X describes by metes and bounds District A, which may be used for single-family and multi-family residence purposes, District B, allowing the same uses as in District A and also allowing neighborhood commercial establishments, and District C, allowing residential and more extensive commercial uses. The ordinance continues to provide that the area comprising Districts A, B, and C shall also be denominated "Special Industrial District D," in which on application of a landowner and upon approval of the landowner's plans by the Planning Board, the ordinance may be amended to allow industrial use of the landowner's property. It is provided that approval shall be given by the Planning Board only if (1) the tract involved consists of not less than 10 acres, (2) adequate off-street parking for all employees is provided and the Traffic Commissioner certifies that no excessive traffic problem will be created, (3) the plans show that the architecture and landscaping of the buildings and grounds are harmonious with the predominant character of the neighborhood, (4) there will be no appreciable emission of noise or smoke or noxious gasses, and the operation is not one in which there is danger of explosion, (5) no signs or advertising materials will be displayed other than the name of the company placed on the building itself.

The ordinance provisions creating "Special Industrial District D" put landowners in the district on notice that limited industrial uses may be allowed, provided the criteria for amendment is met, and makes industrial use in the area "in accordance with the comprehensive plan" of the zoning scheme.

35. Reno, *supra* note 33, at 107.

36. See *id.* at 107.

37. De Meo v. Zoning Comm'n, 148 Conn. 68, 167 A.2d 454 (1961); Huff v. Board of Zoning Appeals, 214 Md. 48, 133 A.2d 83 (1957); Rodgers v. Village of Tarrytown, 302 N.Y. 115, 96 N.E.2d 731 (1951); Eves v. Zoning Bd. of Adjustment, 401 Pa. 211, 164 A.2d 7 (1960).

38. Eves v. Zoning Bd. of Adjustment, *supra* note 37.

control of land use through zoning. These devices prevent the effective exclusion of suitable industries from areas in which land is available; however, they are not useful for preserving the land for industry until the demand for industrial land arises.

4. *Extraterritorial Planning*.—Several states have legislation empowering particular municipalities to control the use of land outside their boundaries.³⁹ Frequently the extent of this power is defined in terms of a specified radius;⁴⁰ within such an area cities have been granted the zoning power as to unincorporated lands.⁴¹ The power to regulate subdivision of land outside municipal boundaries is frequently given,⁴² but this power is of limited utility for preserving outlying lands for industrial use.

Even without expressly given extraterritorial zoning power, informal methods have been devised to give the same effect. A county government interested in planning and controlling land use frequently will agree to implement within its area of jurisdiction a master plan devised by the planning staff of a major city in the county.⁴³ Some cities have zoned extraterritorily without legislative authority within an area which the city may reasonably expect to annex, thus putting developers of outlying land on notice of the uses which will be permitted in the area once annexation is effected.⁴⁴ The development of outlying areas presumably may be more effectively controlled by subdivision regulation if an external standard in the form of a master plan stated in an extraterritorial zoning ordinance is applied,⁴⁵ and knowledge of future zoning laws will presumably cause private developers of outlying land to attempt to comply with them.

5. *State-wide Zoning*.—Zoning by the state on a state-wide level would seem unfeasible. Zoning schemes are tested by the reasonableness of the restrictions as they affect the particular property involved;⁴⁶ therefore, problems peculiarly local are presented. However, the state has an interest in the proper and efficient use of the land within its jurisdiction and may deem it desirable to ensure proper

39. SENGSTOCK, *EXTRATERRITORIAL POWERS IN THE METROPOLITAN AREA* 62 (1959).

40. *Ibid.*

41. See, e.g., *City of Raleigh v. Morand*, 247 N.C. 363, 100 S.E.2d 870 (1957). Cf. *Smeltzer v. Messer*, 311 Ky. 692, 225 S.W.2d 96 (1949), holding invalid extraterritorial zoning in the absence of a statutory grant of power to the municipality. See generally SENGSTOCK, *op. cit. supra* note 39, at 62-65; Melli & Devoy, *Extraterritorial Planning and Urban Growth*, 1959 Wis. L. Rev. 55, 64-66.

42. SENGSTOCK, *op. cit. supra* note 39, at 68-69.

43. Melli & Devoy, *supra* note 41, at 65.

44. *Ibid.*

45. If denial of permission to subdivide for residential purposes is based on the master plan for the area already in ordinance form, the objection that the denial is arbitrary or unreasonable will be less potent.

46. See note 21 *supra*.

planning for the development of land. Since the power to zone at the local level is derived solely from a delegation of the police power by the state, the state may maintain control or supervision over the exercise of the zoning power. The state may impose conditions on the exercise of the power, such as the submission of land use plans for state approval as to certain features, *e.g.*, adequate provision for industrial lands, or it may require adjoining jurisdictions to unify their zoning plans when areas with common problems overlap the political boundaries.⁴⁷

6. *Evaluation.*—The application of zoning ordinances must not unreasonably restrict the use of land. Zoning may effectively preserve potential industrial property for industrial use only so long as the restrictions imposed do not unreasonably preclude beneficial use of the land. If at a given time a particular piece of property is so much more valuable for uses other than industrial that restriction to industrial use is unreasonable, the imposition of such a restriction is an invalid exercise of the police power. An attempt to preserve land for industrial purposes by imposing restrictions nominally for other purposes must still meet the test of reasonableness. Therefore, the zoning power is useful for the preservation of land for industrial development only where land is presently valuable for industrial purposes or where some independent reason can justify restrictions effectively precluding development for other purposes. In the absence of one of these conditions, another approach is necessary if land is to be preserved for industrial development.⁴⁸

C. *Public Purchase and Eminent Domain*

If land suitable for industrial purposes is presently sub-marginal for those purposes, zoning restrictions precluding other uses of the land may be void as unreasonable, and may amount to a taking without compensation. However, if the non-industrial use is permitted, the long-run benefit to the economy of the state or community may be sacrificed. If public works designed to enhance the value of the area for industrial purposes are undertaken, the political unit has a definite interest in ensuring the most efficient allocation of property in the area, and especially in preserving potentially valuable industrial property. If a governmental unit wishes to re-

47. This is now permissive in some states. See, *e.g.*, N.C. STAT. § 158-14 (Supp. 1963). See also CAL. GOV'T CODE §§ 65011-20, setting up the State Office of Planning, among the duties of which is to advise local planning authorities. CAL. GOV'T CODE § 65017.

48. This discussion should not be taken to minimize the importance of an active zoning program in attracting industry by creating an attractive community. See note 9 *supra*.

strict the use of land, it must compensate an owner if the interference with his rights in the land without compensation is unreasonable.

1. *Public Use Requirement.*—It is generally held that both the power of taxation⁴⁹ and the power of eminent domain may be exercised by government only for a public use or public purpose.⁵⁰ The “public use” limitation imposed on the eminent domain power of the federal government by the fifth amendment is now defined so as to be coextensive with the powers delegated to the federal government by the Constitution.⁵¹ The courts of the various states have defined the “public use” requirement both narrowly, to mean “use by the public,” and broadly, to mean “public benefit.”⁵² Both definitions are subject to exceptions established by long usage,⁵³ and the real test seems to be the necessity or utility of government interference under the circumstances.⁵⁴ Due to the increasing complexity of our society and the necessity for more government activity in once private realms, the public use concept as applied by most jurisdictions is fairly broad. For these reasons it seems accurate to say that what is a “public use” for eminent domain purposes is not capable of precise definition, but depends on the circumstances in the particular area at the time the power is to be exercised.⁵⁵

Some state constitutions expressly prohibit the exercise of the eminent domain power for “private use,”⁵⁶ and the due process clause of the fourteenth amendment also precludes a state’s taking the property of one individual and giving it to another individual, absent some justification in terms of public benefit.⁵⁷ The “public use” concept as a limitation on the expenditure of tax revenue for the purchase of property is roughly the same as for eminent domain purposes.⁵⁸

2. *Industrial Development as a “Public Use.”*—Encouraging industrial development is now generally accepted in this country as a proper function of government. The broad national policy of maintaining high employment levels, embodied in the Employment Act

49. 15 McQUILLEN, MUNICIPAL CORPORATIONS § 3919 (3d ed. 1949).

50. 2 NICHOLS, EMINENT DOMAIN § 7.1[2] (1950) [hereinafter cited as NICHOLS].

51. See Note, 58 YALE L.J. 599, 611-14.

52. See 15 McQUILLEN, *op. cit. supra* note 49, at § 32.39.

53. See 2 NICHOLS § 7.2[3].

54. See *id.* § 7.22.

55. “From the nature of the case there can be no precise line. The power requires a degree of elasticity to be capable of meeting new conditions and improvements and the ever increasing necessities of society.” *Olmstead v. Camp*, 33 Conn. 532, 551 (1886); “[T]he term ‘public use’ is a flexible one. It varies and expands with the growing needs of a more complex social order.” *Ryan v. Louisville & N. Terminal Co.*, 102 Tenn. 111, 116, 50 S.W. 744, 745 (1899); *Knoxville Housing Authority v. City of Knoxville*, 174 Tenn. 76, 84, 123 S.W.2d 1085, 1088 (1939).

56. See 2 NICHOLS § 7.1.

57. 2 NICHOLS § 7.1[3]. See *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922).

58. 2 NICHOLS § 6.225[1].

of 1946,⁵⁹ has become an accepted governmental undertaking on the state level as well. Most state governments have a department concerned with the attraction and encouragement of industry.⁶⁰ Thus, the exercise of eminent domain and the expenditure of public funds for the furtherance of industrial development seem to be generally within an accepted area of proper governmental action.⁶¹

However, objections on a more limited level may be raised: although it may be conceded that the state has power to take or purchase land for such purposes as erecting buildings to house the research and solicitation operations of an industrial development commission, the taking or purchase of property to be used by a private industrial concern may be subject to the "private use" or due process objections discussed above. If through the device of using the state as a middleman an individual is forced to give up his property to a private industry to whom he has refused to sell, due process may have been violated, and the "public use" prerequisite may not have been met.⁶² In this situation, both objections would probably be upheld.⁶³ However, it is submitted that control of the development of land through purchase or eminent domain for the purpose of preserving land for industrial use may be properly undertaken. In *Berman v. Parker*,⁶⁴ the Supreme Court virtually equated the permissible scope of the eminent domain power with that of the police power. The case involved the validity under the fifth amendment due process and eminent domain clauses of urban renewal legislation for the District of Columbia. Although legislation enacted by the United States Congress was involved in *Berman v. Parker*, and the eminent domain is coextensive with the powers delegated to the federal government, the Court based its decision on the premise that the power of Congress in the District of Columbia was the equivalent of the police power of the states.⁶⁵ Since this premise was used as a basis for the decision, it would seem that the holding in *Berman v. Parker* that the due process clause of the fifth amendment is not violated by the exercise

59. 60 Stat. 23 (1946), as amended, 15 U.S.C. §§ 1021-24 (1958).

60. "Only three states . . . did not have some type of state planning and development agency in 1957." GILMORE, *op. cit. supra* note 1, at 33.

61. See generally Note, 70 YALE L.J. 789 (1961).

62. 2 NICHOLS § 7.1[1].

63. See JAHR, EMINENT DOMAIN § 6, at 16 (1953).

64. 348 U.S. 26 (1954).

65. "The power of Congress over the District of Columbia includes all the legislative powers which a state may exercise over its affairs. . . . We deal, in other words, with what traditionally has been known as the police power. . . . In such cases the legislature, not the judiciary, is the main guardian of the public needs to be served by social legislation, whether it be Congress legislating concerning the District of Columbia . . . or the States legislating concerning local affairs. . . . This principal admits of no exception merely because the power of eminent domain is involved. . . ." *Id.* at 31-32.

of the eminent domain power so long as the exercise is for a purpose for which the police power may be exercised is also authority for the proposition that the due process clause of the fourteenth amendment does not prohibit the exercise of eminent domain by the states so long as the exercise is for a purpose within the police power of the states. If this is true, it appears that the exercise of eminent domain to preserve land for industrial development to implement a plan of balanced community growth is no longer subject to objection under the federal constitution, unless the program is carried on in such a piecemeal and uncoordinated fashion as to be an invalid exercise of the police power. Thus the primary obstacles to a program of condemning development rights to preserve land for industrial development are the state constitutional provisions.

If development rights are taken to preserve land for industrial use in accordance with long range plans and projections, there is no specific individual or firm in the picture to cloud the issue whether a public benefit will be imparted by the taking. The objection that the use is a private one could be made only in a general sense—private industry would be the eventual user of the land. However, the purpose of the condemnation is to preserve land for industry so as to achieve economic balance in the area and to secure control over industrial development to ensure the maximum economic benefit to the area. The landowner is not being forced to sell his land to a particular individual; he is forced to sell a portion of his property rights to the government for a proper governmental purpose. It is irrelevant that it is contemplated that the property interest condemned will eventually be sold or given to private industry once the purpose of preserving the land until industrial demand arises is achieved; the “public use” requirement applies only at the time of the taking.⁶⁶ It makes no difference that private individuals will incidentally receive benefits. Urban renewal experience has provided substantial authority for this proposition, since the land taken for slum clearance or blight prevention is generally sold to private individuals for their own business or residential uses.

Analogies to condemnation for the preservation of industrial property may be found in the exercise of eminent domain or public purchase for the purpose of conservation of the natural resources of an area.⁶⁷ Land suitable for an industrial plant is also a natural resource, and the establishment of the plant may be necessary before raw materials resources, the conservation of which is an accepted subject of the eminent domain power, may be properly utilized. Also, in at

66. 2 NICHOLS § 7.223. See note 87 *infra*.

67. See, e.g., N.Y. CONSERV. LAW §§ 13, 50(6).

least one case the constitutionality of an enabling act authorizing the use of eminent domain to impose zoning type restrictions has been upheld,⁶⁸ thereby necessarily upholding the promotion of efficient allocation of land as a "public use."

Zoning cases which hold ordinances invalid because they preclude any beneficial use of the land in question, or because the interference with the uses giving maximum benefit to the landowner is unreasonable, frequently employ such phrases as "the ordinance effects an unlawful taking without compensation" of the landowner's property.⁶⁹ It may be argued that such language implies that such a taking *with* compensation would not be invalid. Of course, this result does not necessarily follow, but the argument might be employed as a make-weight illustrating that the thrust of zoning cases in a given jurisdiction is consistent with the validity of a scheme which prevents property owners from making the most beneficial use of their land but which compensates them for the loss.

3. *Nature of Property Condemned or Purchased.*—The power of eminent domain extends to any property or interest in property.⁷⁰ The power does not depend on the existence at common law of a property right in the nature of that sought to be condemned.⁷¹ Any lessening of the rights to use property amounts to a taking for which compensation must be paid if the interference without compensation would be an unreasonable exercise of the police power.⁷²

It would seem elementary that when property is to be taken to preserve land for industrial uses, or for any other purpose, the property right which should be taken is that which may be acquired at the least cost and still have the desired effect. The uses to which land may be put which will most likely preclude its future use for industrial purposes are those which involve the erection of permanent structures occupying a large portion of the land area. Agricultural, timbering, and similar activities would not have this effect, whereas residential subdivisions and commercial establishments usually will preclude efficient industrial use. Even when residential land is not zoned for exclusively residential purposes, its use may be restricted by private covenants for residential use, and pre-existing residential use may preclude the establishment of a large manufacturing operation because of the threat of possible suits for nuisance.

Land which is presently of sub-marginal value for industrial pur-

68. State *ex rel.* Twin City Building & Investment Co. v. Houghton, 144 Minn. 1, 176 N.W. 159 (1920). See HAAR, LAND USE PLANNING 268-69 (1959).

69. See 101 C.J.S. *Zoning* § 29 (1958).

70. See 1 NICHOLS § 2.1[1].

71. *Ibid.*

72. See *id.* § 1.42[1]; 1 РАТНОКН 6-5 to -6.

poses but which is marginal or above marginal for commercial or residential purposes may be preserved for industrial use only by payment of just compensation.⁷³ The preservation of land for industrial use could be effected by condemnation or purchase of the right to develop the land⁷⁴ for other than industrial or agricultural purposes. Although this right may be rather valuable if the land in question is currently above marginal for commercial or residential purposes, it would be otherwise if the land is presently sub-marginal for any use other than agriculture or forestry, but its value for residential or commercial purposes will likely rise before its value as an industrial site.

If projections indicate that land will become valuable for commercial or residential purposes at a certain time and for industrial purposes several years thereafter, the land may be preserved for industrial use by condemning or purchasing the right to use the land for non-industrial purposes for the projected period of years. Thereafter, the land may be preserved for industrial purposes by zoning. Condemnation of the right to develop for a term of years would presumably cost less initially than condemnation of all development rights; however, if the condemnor owns the permanent development rights, it is ensured that it will not require extremely accurate projections as to the number of years for the property to become valuable for industrial purposes.

If the condemning or purchasing authority chooses to purchase all development rights (except for agricultural or related uses), it will not merely limit the development of the property to development for industrial use; the condemnor will also have an interest in the

73. This statement is of course a generalization. The question is whether the exercise of the police power has unreasonably precluded or delayed any practical use of the land; the factors considered in answering this question are when the demand for the property for the allowed uses will arise, the difference in the value of the property for allowed uses and for uses not allowed, etc.

74. The terms "development right" and "the right to develop" for a certain purpose are used in this paper in a negative sense; *i.e.*, these terms indicate that the condemnor or purchaser has restricted the original owner's right to develop, but has not taken such an interest as will allow it to develop the land independent of the owner of the underlying fee. The landowner would retain the land in fee subject to a restriction in the nature of a restrictive covenant running with the land; the condemnor would acquire the right to enforce the restriction against the land and the right to relinquish the restriction when the purposes for which the restriction was imposed will be served. See note 81 *infra* and accompanying text. The owner may use his lands for as long as he desires for the purposes which remain open to him, and only when the same person has acquired both the "development rights" and the underlying fee can development for the forbidden purposes be undertaken. The condemnor could, of course, acquire the rights to develop independently of the owner of the fee, but such rights would in most instances be so great an interference with the fee interest as practically to constitute ownership of the fee. The condemnation of such an interest would seem unduly expensive.

property which must be acquired by any future developer of the land.⁷⁵ Since the governmental unit must choose to relinquish its property interest before any development takes place, it will be able to select among industries competing for the property, using maximum benefit to the community as the criterion. If only the right to develop for commercial or residential purposes is condemned, the owner of the remaining interest in the property retains the power to sell to any industry which wishes to locate in the area, regardless of its solvency or potential benefit to the community. The extra control to be gained by condemnation of the right to develop for industrial purposes as well as for residential and commercial purposes would seem worth some extra cost, especially since this extra cost will be small (if the land is not presently valuable for industrial purposes)⁷⁶ and since the cost may be recovered by selling this interest to the industry desiring to build on the land.⁷⁷ The fact that at least some of the cost of condemnation may be recouped by sale to private industry should help overcome any objection that land use control by eminent domain may be too costly to be practical. Also, the possession of

75. See note 74 *supra*. The English Town and Country Planning Act of 1947, 10 & 11 Geo. 6, c. 51, nationalized substantially all the development rights of the country and required planning permission from an administrative agency for any further development of the land. Development may be undertaken only upon payment of a development charge, representing a payment to the state for the use of its property interest—the development rights. The system seeks to make land salable only at its existing use value, and seeks to prevent sales at the value of the property for the use to which the developer will put it, since the increased value of the property for the use after development is due to the use of the property of the state—the development rights—and not to the value of the underlying fee. A state agency is empowered to compulsorily purchase land from a private individual at existing use value if the private owner seeks to sell at a price including development value. This power of the state will tend to force landowners to sell at existing use value. For a discussion of the Town and Country Planning Act, see HAAR, *LAND PLANNING LAW IN A FREE SOCIETY* (1951); Monson & Monson, *Development and Practice of British Planning Law*, 44 ILL. L. REV. 779 (1950). The system of condemnation and purchase of development rights proposed in this article offers no such inducement to landowners to sell at existing use value, hence a landowner would be free to sell his interest to an industry at the full value of the land to the industry. If full value is asked by the landowner, the industry will not be willing to pay any extra charge to the owner of the development rights since by hypothesis the industry has paid to the landowner the full value of the land to the industry. The compulsory purchase procedure available under the English system seems to be unavailable in the United States under the constitutionally based "private use" rule. See notes 56 and 57 *supra* and accompanying text. See also notes 62 and 63 *supra* and accompanying text. This difficulty might be avoided by including in the property rights condemned or purchased the right to receive a designated portion of the value of the development rights when the land is eventually sold to an industrial purchaser.

76. Valuation of property for eminent domain purposes is made as of the time of the taking. 3 NICHOLS § 8.5 *Cf.* Comment, 50 CALIF. L. REV. 483, 488 (1962).

77. However, if the governmental unit acquires the power to reject potential industrial purchasers, the interference with the private interests in the land is more substantial, and in certain circumstances may make cost of condemnation or purchase appreciably higher.

such a right would give the condemnor a very flexible control, with the capacity to meet an unanticipated change in conditions with little extra cost.⁷⁸

4. *Enabling Legislation.*—Since a municipality generally is limited to the exercise of powers expressly or impliedly granted by the legislature,⁷⁹ enabling legislation would be required for municipal exercise of eminent domain for preserving industrial sites. Legislation of a similar nature has been enacted in several jurisdictions for the acquisition of interests in land in order to preserve them as open spaces.⁸⁰ The principle of controlling land use and development by condemning or purchasing easements or development rights, or of a conveyance and reconveyance subject to restrictive covenants,⁸¹ could well be extended for purposes other than preservation of open spaces—these devices would be useful wherever the long-range benefit to

78. It has been said of imposing zoning type restrictions through eminent domain: "No effective zoning plan could be accomplished by the exercise of eminent domain. If there were some diminution of the full use of property, the city would need to pay the loss to the private owner. This would mean a laborious and expensive proceeding for almost every parcel of land. Since the city could not afford to pay this cost out of public funds, but would need to assess the awards on the property benefited, the cost of the process would be enormous. The restrictions would consist of public easements of a permanent nature. But as every living organism grows and changes, these easements would have to be changed from time to time by successive applications of condemnation. The method would be clumsy and ineffective. Some states in their zoning enabling acts have tried to provide for the employment of eminent domain in whole or part, but the attempts have never been successful." BASSETT, *ZONING* 27 (1936), as quoted in HAAR, *LAND USE PLANNING* 269 (1959).

79. 2 McQUILLEN, *op. cit. supra* note 49, § 9.01.

80. *E.g.*, CAL. GOV'T CODE §§ 6950-54; N.J. STAT. ANN. § 13:8A6 to -12 (Supp. 1963); N.Y. CONSERV. LAW §§ 875-85.

California allows municipal governments to acquire rights in real property "in order to preserve, through limitation of their future use, open spaces and areas for public use and enjoyment." CAL. GOV'T CODE § 6950. Section 6953 provides: "The legislature further declares that the acquisition of interests or rights in real property for the preservation of open spaces and areas constitutes a public purpose for which public funds may be expended or advanced, and that any county or city may acquire, by purchase, gift, grant, bequest, devise, lease or otherwise, the fee or any lesser interest, development right, easement, covenant or other contractual right necessary to achieve the purposes of this chapter. Any county or city may also acquire the fee to any property for the purpose of conveying or leasing said property back to its original owner or other person under such covenants or other contractual arrangements as will limit the future use of the property in accordance with the purposes of this chapter." Apparently only the power to purchase is given by this enactment, and not the power of eminent domain. See Note, 12 STAN. L. REV. 638 (1960).

New York provides for state aid to municipalities for establishing parks, and provides for allowing the former owner to remain on property acquired for a period not over ten years, during which time the property is treated for tax purposes as belonging to the original owner. N.Y. CONSERV. LAW § 884. New Jersey provides for the condemnation of "conservation easements" for preserving open spaces. N.J. STAT. ANN. § 13:8A12(b) (Supp. 1963).

81. If this procedure is followed, care should be taken so to draft the covenants that the condemnor may release the restriction, regardless of intervening conveyances of the fee.

the community will be increased by delay in development or by preventing development for certain purposes.⁸²

5. *Land Suitable for Preservation Through Condemnation or Purchase of Development Rights.*—If land is reasonably valuable for industrial, residential, and commercial uses, it may be preserved for industrial use (or for residential or commercial use) by zoning, provided the difference in value for the various uses is not so great as to sustain a claim of confiscation,⁸³ and provided the surrounding development allows for the desired use without unreasonably disturbing the existing character of the general area. If land is presently of little value for industrial use, even though potentially valuable industrial property, and if its value for commercial or residential use is high, zoning for industrial purposes may well be unreasonable,⁸⁴ and the value of the right to develop for commercial or residential purposes may well make the cost of purchase of these rights prohibitive or impractical. If the projected development of the area indicates that land presently devoted to agricultural or similar uses will become more valuable for industrial use before it becomes valuable for commercial or residential uses, and if it is determined that industrial use of the land in question will be the most beneficial to the community, there will be no need for government interference,⁸⁵ since the competitive process should by itself assure the allocation of the land to the use which will most benefit the community. Therefore, government purchase or condemnation of development rights to preserve land for industrial use is both feasible and desirable only in the case where (1) land is presently sub-marginal for residential, industrial and commercial purposes, (2) projections indicate that the demand for the undeveloped or agricultural land for residential and/or commercial purposes will arise before or at the same time as the demand for the property for industrial purposes, (3) the land will eventually be of more value as an industrial site than other property which will be available for industrial use in the area, and (4) industrial use of the property will be the most beneficial use to which the property can be put from the standpoint of the public.

6. *Time of Condemnation or Purchase.*—If a state or municipality undertakes a program of preserving potential industrial property by purchase or condemnation of development rights, it must anticipate the demand for the property for other purposes; failure to do so may

82. Home rule municipalities may not require such legislation, depending on the constitutional and statutory sources of their powers.

83. 1 RATHKORF 4-2 to 4-6.

84. *Ibid.*

85. Unless the control factor alone is thought sufficiently important to warrant the expense. See note 77 *supra* and accompanying text.

make the cost of purchasing the rights prohibitive. If the government unit seeks to purchase or condemn too long before the property is actually in demand either for the desired or the undesired purposes, its investment may be too speculative and uncertain to be profitable.

Some cases seem to have imposed a time limit beyond which the power of eminent domain cannot be exercised because the property is not reasonably needed for the public use.⁸⁶ These cases indicate that the public use limitation allows condemnation or purchase only for public use beginning in the reasonably foreseeable future. Thus, governmental officials must make reasonable plans for the future, but apparently they may be prohibited from condemnation an unreasonable time before actual use is contemplated. However, since the public use or purpose involved in condemnation of development rights is to conserve the land resources of the area for certain purposes, this time limitation would not seem applicable. The public use or purpose is the conservation of resources for future development; thus the public use is a present one. The future use of the property, though beneficial to the public, will largely be by private concerns.⁸⁷ This is also the answer to "private use" objections to such a scheme.⁸⁸

7. *Effects of Land Use Control by Condemnation and Purchase.*—The advantages of land use control by purchase and condemnation, in addition to the preservation and control of industrial resources, arise from the certainty which public ownership of development rights would add to the predictability of the development of the area. Public ownership of development rights should have the effect of indicating to private developers the character and direction of the growth contemplated by the planners of the area, and should therefore have an influence on the development of the area from the private sector.

86. See, *e.g.*, *Board of Educ. v. Baczewski*, 340 Mich. 265, 65 N.W. 810 (1954), holding condemnation of site for school invalid when the property might not be used for school purposes for 30 years in the future. Cf. *Carlor Co. v. City of Miami*, 62 So. 2d 897 (Fla. 1953), rejecting collateral attack on prior condemnation for airport purposes when it was shown that no use had been made of property for seven years since condemnation, and stating that public officials have a duty to plan for the foreseeable future.

87. The fact that the land will ultimately be used by private concerns is not in itself a valid objection to the condemnation or purchase. Redevelopment laws frequently provide for turning over condemned land to private developers subject to restrictions or supervision, justifying this practice on the grounds that the government itself is not well equipped for the task of redevelopment. See JAHN, *EMINENT DOMAIN* § 7 (1953). It is common to give the eminent domain power itself to regulated public utilities, but there is some question as to the extent of public control over a specific private undertaking necessary to justify the use of the eminent domain power for that undertaking. See 2 NICHOLS § 7.5[2]. Compare *id.* at § 7.5[3].

88. See, *e.g.*, *Opinion of the Justices*, 152 Me. 440, 131 A.2d 904 (1957). Cf. *City of Frostburg v. Jenkins*, 215 Md. 9, 136 A.2d 852 (1957). See text accompanying notes 56 and 57 *supra*.

The effect should be similar in kind to the effect of unauthorized extraterritorial zoning discussed above.⁸⁹

The condemnation and purchase of development rights to preserve industrial sites should give planners a more certain idea of the development of the community and should help assure that the projected growth of the area will in fact take place. Since the future development of the area is reasonably predictable, rights of way for future highways and utilities may confidently be acquired in advance of actual development—usually at a substantial saving.⁹⁰

The preservation of urban industrial property should help ensure the growth of a balanced community with a tax base broad enough to make tax rates reasonably low for public services.

Separating ownership of development rights from the ownership of the rest of the property interests in a piece of land may affect the marketability of the land before it is in demand for industrial purposes. The most substantial effect on marketability would be felt at the time when the land in question has become valuable for residential or commercial purposes but before it has become valuable for industrial use. Before the land's value for commercial or residential uses arises, the use restrictions will not affect the optimum use to which the land may be put; after the land's value for industrial use arises, the restrictions are of no greater influence than zoning restrictions, unless the governmental unit possesses the right to develop for industrial purposes and thus has full control over deciding which industrial concern will be allowed to use the property.⁹¹ Any possible interference with the benefits of ownership presumably will be allowed for in the condemnation price.

8. *Evaluation.*—Condemnation or purchase of development rights to preserve land for industrial use will be useful only in conjunction with long-range planning for industrial development. It is practically feasible on a large scale only if reasonably long-range projections of area development can be made; the cost of condemnation may be prohibitive if value rises because development is imminent; and one important advantage of the device is its probable side effects on long-range development decisions from the private sector. Although

89. See text following notes 43 and 44 *supra*.

90. On the devices of excess and future acquisition, see HAAR, *op. cit. supra* note 78, at 467-69. See also 2 NICHOLS § 7.5122. "In 1952, California established a revolving fund, now amounting to \$30 million, for the purchase of rights of way for future highway improvements. It has been estimated that close to \$200 million has been saved in the three years it has been operating. See Morony, *The Laws Behind Our Roads: A Plea for a More Enlightened Attitude*, 43 A.B.A.J. 15 (1957)." HAAR, *op. cit. supra*, at 467 n.17. The more certain the development of the area, the greater the usefulness of future acquisition, since land could also be acquired for schools and other purposes. See, however, note 86 *supra* and accompanying text.

91. See note 77 *supra* and accompanying text.

accurate long range projections may presently be wanting in most areas, it is submitted that this device is an important potential tool available to those political units which now or in the future will need effective control of the use and development of land to ensure the optimum balance in metropolitan areas.⁹²

III. CONCLUSION

For many reasons, a political unit may decide to undertake a program of encouraging the establishment of industry within its borders. This may be effectively done by informing entrepreneurs of the locational advantages which sites within the jurisdiction offer and by increasing the attractiveness of the sites. Research necessary to provide industry with information about possible plant sites and resources will provide part of the data from which projections may be made as to future development of the area. When such projections indicate that an area is one which will in the future be a desirable location for industry, steps should be taken to ensure that private allocation of land use does not prevent the realization of this industrial potential. The preservation of the resource of potential industrial sites may be undertaken by zoning regulations and related devices and by condemnation or purchase, and preferably by a combination of these approaches. Whatever course is followed, the result in the long run should be to improve the economy of the political unit and to promote efficient land use and balanced development of the area. This result will follow both from the direct governmental control and from the influence of government control on development by private interests. If the plans are comprehensive and the projections accurate, substantial savings to the governmental unit may result from increased ability to anticipate future governmental demands for property, thus decreasing the net cost of developing the necessary thorough plans and projections.⁹³

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92. For a discussion and opinions as to the present utility of the device of condemnation of development rights to preserve open spaces, see Comment, 50 CALIF. L. REV. 483, 492-93, 494-99 (1962).

93. See note 90 *supra*. The influence of governmental control should make the development of the area more predictable, thus increasing possible savings due to this factor. This benefit is in addition to the prospective increased tax base, see text at note 24 *supra*, and to the control element available with the condemnation approach, see text at note 77 *supra*. Long range planning of itself will tend to eliminate certain government costs, such as those caused by the development of blighted areas which must be eliminated by urban renewal. If projections are accurate, the condemned development rights may become a valuable property interest which may be sold to chosen developers subject to appropriate restrictions. See text accompanying note 77 *supra*. But see note 75 *supra*.