

Legal

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May 5, 1971

NOTE TO GRANT MITCHELL

SUBJECT: Title VII Assistance to Existing New Communities

You asked for my comments on the above matter. I am assuming that you are thinking of new communities such as Reston or Columbia which were established and financed without Federal new community assistance, are substantially under way and are now considering applying for some form of Title VII assistance.

As you know, the legislative history of Title IV, (a discussion of which is attached) indicates a prohibition against using guarantee assistance to "bail out" a developer who has run into financial difficulties or to refinance an existing new community. However, a developer who wishes to build a significant addition to a new community would not be precluded simply by virtue of owning some adjacent developed land or facilities. This history appears applicable to Title VII guarantee assistance, particularly in view of statements such as appear on page 30 of the Senate Report that Title VII "would incorporate the new community guaranty program authorized in Title IV of the Housing and Urban Development Act of 1968."

The Title VII legislative history also deals independently with this question of assistance to existing new communities. The Senate Report states that:

The Committee finds that, at present, substantial barriers exist which have prevented significant new community development on a national scale. These include difficulties in financing enterprises such as those which involve a large initial investment followed by a delayed and irregular pattern of cash return; difficulties in assembling suitable sites of sufficient size at a reasonable cost; and difficulties in coordinating site and related improvements among all involved public and private organizations. Federal aid would be provided under this Part in order to help overcome these impediments and to encourage the participation in new community development by public and private entities which possess the requisite knowledge, financial resources, and other capabilities necessary to assure the successful completion of developments which will promote the public benefit.

In view of this history, it seems that no Title VII guarantee or loan assistance should be provided to:

1. bail out an existing new community which is in danger of floundering or
2. refinance an existing new community which has already acquired and planned most or all of the site and already has permanent financing.

On the other hand, if a developer wanted to acquire, plan and develop a well balanced major addition to a new community and was truly faced with the impediments discussed in the Senate Report, then such assistance would seem within legislative intent.

A case can be made, however, that a somewhat looser standard applies to Title VII supplementary and public service grant assistance (though the latter is only available during the initial stages of development and would not be obtainable by a new community which is some years under-way). Unlike Title IV, Title VII grant assistance may be given to aid a new community development program regardless of whether direct financial assistance is given to the new community developer. The various forms of assistance are independent of each other. Thus, the concerns expressed in the Title IV legislative history about refinancing private developers are not directly applicable to the Title VII grant assistance given to local public bodies. Further, while the first two barriers to successful new communities mentioned in the Senate Report above would generally not exist in an existing new community, such new community might be subject to difficulties in coordinating site improvements among public bodies. If an existing new community were having difficulties in coordinating public improvements and facilities to its growth, if the new community development program and developer met the requirements of the statute and regulations and if the grant assistance would benefit the new community and carry out the public purposes of Title VII, then the local public bodies affected by an existing new community could be legally eligible for grant assistance even when the private developer was not eligible for loan or guarantee assistance.

Legal eligibility aside, I don't believe that such existing new communities were the kind of new communities generally contemplated by Congress in fashioning Title VII and if assistance to such communities is felt desirable, it should be administered with a view to presenting the best candidates for such assistance and with awareness of possible criticism.

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Attachment



deems satisfactory." Since Senator Sparkman's definition is subsumed in the statutory requirements and he does refer back to Title X's definition, it would seem that a new community should continue to be defined primarily as a development meeting the requirements of this Act.

It should be defined primarily, and not completely, in terms of the Act itself because Senator Sparkman also evidenced an intent that a new community must pass an additional legal requirement. He speaks of new communities establishing "new governmental units" but this must be read together with statutory and Senate Report language that clearly contemplates that a new community may be built around existing rural towns and other governmental units e.g. "The program could also be used to help revitalize smaller communities which are some distance from metropolitan centers, giving them the basic advantages of new communities." (Senate Report p. 51) "New" in this context must mean that a new community may consist of additions to an existing governmental unit but that the components of the community must be a separate governmental unit.

This Title requires that a developer do more than find an established community, add to it a housing tract, and call the result a new community. In responding to such a hypothetical situation put by Senator Cotton, Senator Sparkman said "Subdivisions like Belair in Maryland are not new communities or new towns within the meaning of the term. I should think (sic) under the description the Senator from New Hampshire gives, that a subdivision would take care of the situation." S. 6458.

### III. Requirements For Eligible New Community Development

1. Can Title IV guarantees be given to partially completed new communities or new communities that build on or around existing facilities?

This question encompasses a wide variety of hypothetical situations only some of which are clearly discussed in the legislative history. The answer may be yes or no depending on the exact situation.

The Senate Report makes it clear that a developer may build around and in conjunction with existing structures and facilities. "It is not necessary in all cases to provide all types of housing and industrial and commercial facilities on the land which is being newly developed, since there will be instances where the new community development is adjacent to an existing community.

It is intended, however, that there be a good balance taking into consideration the area as a whole." p. 51.

This language makes no distinction between situations in which the new community's developer has no interest in the "existing community" and those in which he has. A developer's interest in an existing community or a partially built new community per se would not preclude his obligations from being guaranteed.

Congress' concern in this matter is to make certain that the government's guarantees be used only to carry out the purposes of the Act. In particular, they do not want these guarantees to be used to "bail out" a developer who has run into financial difficulties or simply to refinance existing new communities. This intent comes out in an exchange between Senators Sparkman and Dominick. Dominick prefaced his question by stating that "of the two model cities we have in the Washington area - Columbia and Hoston - at least one of them has been in some financial difficulties."

He continued, "I wish to ask . . . whether or not it is intended that under the terms of this bill these two communities would be within the range of the guarantees of the Government of their financial obligations."

Senator Sparkman. "No. They initially went their way on a different course of financing and would not be eligible under this bill as I understand it."

Senator Dominick. "Is that because it is not to be retroactive? Is that the reason?"

Senator Sparkman. "There is no provision in here for retroactivity. Furthermore, it anticipates that HUD and FHA will be in from the very first in the planning and development stages."

Interpreting this in the light of the Senate Report quoted above and of the statutory language recognizing the use of existing facilities, Senator Sparkman was saying that these new communities would not be able to obtain government guarantees for the refinancing of existing mortgages. Such refinancing would be retroactive. But a significant addition to a new community would be judged in the same way as a significant addition to any other town as suggested in the Senate Report. Some refinancing might be necessary if the government were to guarantee the financing of a significant addition, but as long as such refinancing is incidental to the main purpose of creating a new community, it would not be called retroactive.