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LAND ACQUISITION IN A NATIONAL LAND POLICY

PART II - URBAN LAND

NATIONAL RESOURCES PLANNING BOARD

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LAND ACQUISITION IN A NATIONAL LAND POLICY

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CHAPTER I

URBAN PATTERNS AND PROBLEMS

Complacency as to the social and economic future of the American city is today giving way to alarm. The banker's digestion is upset by sour mortgages. The downtown merchant sees his trade trekking to more spacious shopping centers. The landlord finds his nineteenth century buildings inadequate for twentieth century demands. The home-owner no longer wants to live on a crowded, noisy street: he seeks more oxygen and less exhaust for his lungs. The manufacturer prefers to locate where decent housing and recreational facilities are available to his workers, where land is cheaper and taxes are lower. The motorist wants less "stop" and more "go". The bankrupt subdivider finds that he is not the only one who suffered when he turned good farm land into weed-grown vacant lots. Owners of jerry-built homes in poorly planned developments are paying excessively for second rate accommodations. Transit companies have extended their lines out of all proportion to the increase in passengers. Municipal officials are hagridden by skrinking tax bases and serious tax delinquency.

The basic maladjustment behind most of our urban land problems today is the irrationality of our urban patterns. The men who, thinking or unthinking, built our cities and laid down these patterns of land use have not been guided by any consistent urban policy. The tolls of this

neglect, the costs of inefficient patterns and unplanned expansion, are being levied on every American city today; and although their weight is doubled by the depression, these costs are no temporary manifestation of the business cycle, but a permanent shadow on the civic scene. Until now, our minds have been attuned to perpetual urban growth. We have deluded ourselves by thinking that every error would be washed away by another wave of expansion, by another boom in land values, by another and yet another Golden Age. We know better now.

Think of a city, for a moment, as a productive unit in the national economy -- an assembly plant bringing together railroads and steamships, factories and workers, warehouses and retail outlets, bankers and consumers, for the purpose of slaughtering hogs, or transshipping wheat, or manufacturing automobiles, or selling ladies' underwear. A competent industrial architect or economic planner would lay out this plant in such a way as to promote the free flow of goods in process, to eliminate cross-hauling, to provide cheap and adequate land for housing, industry, commerce, and business, to minimize maintenance, repair and servicing costs, and to space the components of an urban economy in their most rational relationships.

But most of our cities have not been laid out by anyone: they have grown haphazardly, in fits and starts, in response to invisible and uncontrolled "laws" and forces. Even those "planned cities" like Washington

and Indianapolis have not been planned as functioning economic units, but have rather been forced into arbitrary geometric strait-jackets decreed before any planner could have envisaged the twentieth century economy. We have never stopped to consider the maximum efficient size of a city -- the point at which the economies of concentration are overbalanced by the diseconomies of congestion, the point at which the social and economic chromosomes should subdivide themselves and form a second urban unit. The forces of growth and expansion have been treated as immutable, hieratic laws, not to be tinkered with by mere mortals, and so have been suffered to lash out first this way, then that, bursting periodically through the feeble bonds of zoning laws, sanitary codes, and land use regulations. Our urban assembly plant has not grown methodically in accordance with a master plan laid down by a competent civic architect: it has sprawled helter-skelter over the landscape in response to the demands of a dozen mad shop foremen, each intent on outstripping the others in volume of production and number of employees. Quite naturally, the productive unit we call a city has fallen out of kilter. Part of the machinery is obsolete, all of it needs oiling, and the assembly line is scattered all over the lot. Parts made in one shop do not fit the parts made in another, and the product is marketable only at enormously reduced prices to customers who are bad credit risks. The refrigerating plant is built into the side of the blast furnace, and the smoke from the smelter belches through the broken windows of the Directors' Room.

And what are the consequences of this gigantic neglect of urban patterns of growth and expansion?

Blighted Areas and Slums

Around the core or cores of most American cities today, you will find an area of declining housing and marginal businesses, an area losing population and value, an area obsolescing both as to location and function, which planners call a blighted area.*

This blight develops in the trail of urban expansion. The small, healthy city will consist of a compact core of business and industrial uses, surrounded by residential land. As the city grows, the core expands, driving the residential uses before it. The zone of transition, inactive residential property waiting to become industrial or commercial, is blighted. Now, as long as the expansion is slow, continuous, and spreads evenly from the central core, the amount of blighted property is small, and the blight is temporary. But in the typical American city today, blight has run wild and has poisoned 30% or 40% or 50% of the residential land. The reason is twofold: first, the migration into the country, the flight of population to the suburbs has been going on at an increased rate as cars have become cheaper, roads better, and cheap land more accessible; and second, the urban core has stopped expanding, areally, or has even begun to shrink, because of vertical expansion into skyscrapers

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* For a comprehensive treatment of this problem, see Walker, Mabel: Urban Blight and Slums, (Harvard City Planning Studies XII, 1938)

and lofts, because of the smaller space requirements of modern machinery, and because of the steady march of space-using industry to the urban periphery. Thus what was once a thin strip of blight -- a zone of transition between business and residential use -- has become a broad band, from which business shrinks away on one side and residence recoils on the other. Further expansion of the city only intensifies the blight: new business uses will either pile themselves on the top of the downtown heap, or skip over the middle ground to establish sub-centers in the suburbs; new residential developments will naturally avoid the high prices and squalor of these "orphaned districts" and seek unused land and open country.

In St. Louis, for example, the older parts of the city along the river lost 50,000 population between 1920 and 1930. In the decade 1910-20, 13% of the city's area was losing population; in the decade 1920-30, 26%. Although many buildings have been torn down, 22% of the space in the older sections is vacant, and one third of the people still living there would like to move out if they could.*

Once an area has become blighted, it is under strong economic pressure to become a slum -- residential or industrial. Property owners allow their property to deteriorate. Feeling that it is only a matter of time before the business center spreads to their property, they will not make

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* Urban Land Policy, St. Louis, Mo., City Plan Commission, Sept. 1936. See the Section "High Municipal Overhead", p. 9.

repairs or renovations; they hold their property for fancy prices, based on future expectations which will never materialize; taxes are allowed to go unpaid as long as it is safe to do so; structures are rented at cutthroat prices to marginal entrepreneurs or underprivileged tenants; vacant lots are filled with "taxpayers" -- junkyards, signboards, parking lots, or dumps. Blighted areas and slums are a net loss to the city, for they necessitate high expenditures and produce low returns; they are a crime against the decency of the people who are forced to live there; they are a curse to the owners of competing property; and they usually turn out to be bad investments for the owners.

Premature Subdivision

At the other end of the urban radius, in the peripheries, our cities have been periodically plagued with epidemics of wildcat land speculation and premature subdivision. The influx of new population into a stable community suddenly puts a premium on housing or sites for housing. Land prices rise, at first reflecting the increased demand; then they begin to anticipate the demand; next, the speculative pendulum swings too far, and land prices lose all relationships with true values based on non-speculative demand and reasonable prospect of use. The self-propelling spiral careens skyward until at last the psychological props are knocked from under it, and the boom collapses, leaving the land and the community buried under a welter of debt, unpaid taxes, defaults, and bankruptcies.

Take Flint, Michigan, as a typical American city. Here is an analysis of Flint's premature subdivision problem:*

1. Flint is burdened with a serious oversupply of vacant, subdivided land.

2. The scattered housing on this land greatly increases current municipal operating cost.

3. The several million dollars of public funds which have been spent for utilities in these areas make their use a public responsibility.

4. The heavy tax delinquency in these areas make them non-productive for tax revenue.

5. The accumulated back taxes and the scattering of deteriorated houses are serious deterrents for new building within these areas.

6. In spite of the huge areas vacant within the city, new building occurs principally outside the city limits, a trend which will eventually result in serious depopulation of the city.

Substitute for "Flint" the name of almost any American city, and the analysis will be equally true. Cleveland contained 375,000 lots in 1929, of which 175,000 were vacant. Chicago had platted enough suburban land early in the '30s to house 18,000,000 people. A New Jersey State Planning Board study revealed that there was in 1938 enough land subdivided in the North Jersey Metropolitan Area to accommodate any conceivable increase in population for the next 40 years. Of 13,400 subdivided acres in Bergen County, N. J., 5,600 (or 42%) were completely vacant, and 3,200 (another 24%) were occupied by less than 5 houses to the block. The platted land

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* Bacon, Edmund N. "A Diagnosis and Suggested Treatment of an Urban Community's Land Problem", XVI Jour. Land & Pub. Util. Econ. 72 (Feb. '40).

of Los Angeles County, California, is said to be 55% vacant; of Duluth, Minnesota, 67% vacant; of Burbank, California, 75% vacant. Radford Township, in the Detroit area, is supplied with over 27,000 subdivided lots, of which 1,179 -- about 4⅓% -- were occupied in 1937.

What is the objection to a premature subdivision? It may be asked; the speculators and a few suckers lose their shirts, but no one else suffers.

The more obvious answers to this question are given in the analysis of Flint. Scattered housing raises costs of laying on utilities, of police and fire protection, of street maintenance and repair; there is little return to the city, for a majority of these properties are tax delinquent.* But worse, new building skips over these "frozen" lands. Original title is often faulty, and is further obscured by successive transfers. There is usually a superstructure of unpaid special assessments, and often a series of mortgages, liens, and sales on the installment plan, all in default. In plain fact, this land belongs to no one, because it is worth no one's time and money to clear title. Very often the municipality itself does not possess legal powers to establish valid title, and the property remains nominally on its tax rolls, sometimes

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* The Radford study, by E. G. von Storch, for example, indicated that 60% of the vacant lots had been tax delinquent for over 5 years; and Philip H. Cornick's study of subdivision in New York State revealed that about 2/3 of the tax delinquency (in dollars, not lots) was chargeable to vacant parcels (for 52 municipalities of all sizes).

costing more, in bookkeeping and advertising charges, than it returns in taxes. Meanwhile, new development passes over these sterile areas within the city limits and settles beyond them, leaving behind little deserts as effectively removed from use as if they were bottomless bogs.

The High Municipal Overhead

The inefficiency of unplanned urban patterns is no petty concept dreamed up by planners at their drafting boards. It is a reality which hits every citizen where he lives, where he works, and where he plays. Every minute he must spend in transit to and from work costs him money and wastes his time; every delay in delivering goods raises the price of his groceries. If his city, like most cities, provides inadequate free recreational space, he must pay to swim, to play golf, or even to sit in an open field and eat his swiss-on-rye. He may discover that his house and the subdivision in which it stands are obsolete both in materials and design, and he may be paying more interest and amortization than the rental value of his house. His taxes are higher, his standard of living is lower, in a poorly planned city.

Traffic engineers have devised elaborate formulae to compute the value of time and money wasted by traffic congestion. Accurate or not, they indicate in broad terms the magnitude of this waste: for New York City, $500,000 a day; Cleveland $100,000 a day; Worcester, Mass., $35,000 a day. When traffic increases to the point where existing roads cannot carry it without intolerable delay, streets must be widened. The extension of Seventh Avenue and the widening of Varick Street in New York City

cost $6,000,000 a mile; in Chicago, the double decking of Michigan Avenue cost $16,000,000 a mile, and the construction of Wacker Drive, $22,000,000 a mile. Even our richest municipalities cannot afford many miles of this sort of artery.

Another index of the high costs of inefficient urban patterns is the amount of distressed property - distressed in part because it is poorly planned, obsolete, and capitalized at unrealizable values - which is a drug on the municipal real estate market. The Federal Home Loan Bank Board reports that in 1932 and 1933, the rate of mortgage foreclosure against urban residential property was proceeding at the rate of over 270,000 homes a year. Title and mortgage companies, which had been in the business of guaranteeing and reselling small mortgages, found themselves unable to meet outstanding obligations on $2,500,000 worth of guarantees in 1933. The flood of foreclosures on every type of real property, and the complete collapse of the real estate market, brought on moratoria in more than one state. The Federal Government rushed money into the breach to save the credit structure, an important part of which was secured by highly illiquid and probably unsound mortgages. The Home Owner's Loan Corporation between June 1933 and June 1936 underwrote slightly over $3,000,000,000 in mortgages on slightly over 1,000,000 properties - the dregs of the real estate market. Even after refinancing on liberal terms, the HOLC has had to foreclose roughly ___% of these properties.

Tax Delinquency

Also indicative of the "submarginality" of urban land is tax delinquency -- inability of the land to meet charges levied against it by the city for services rendered. There are, of course, many causes of tax delinquency: there may be loop-holes in tax law or procedure which invite non-payment; tax officials may find it politically inexpedient to make wholesale foreclosures of the electorate's homes; in many jurisdictions, property is so inequitably assessed that many classes are unable to earn their taxes even in good times; and in times of depression, temporary insolvency causes wide delinquency; but it is certain that one of the major causes of tax delinquency is unwise land use.

Just how much tax delinquency, in any given instance, is attributable to unwise land use, of course, cannot be answered in the abstract. Philip Cornick's study of premature subdivision in New York* indicates that this form of unwise land use is responsible for over half the tax delinquency. In 52 cities and towns studied, two thirds of the total accumulated tax arrears, in dollars, had been incurred by vacant, platted lands; and of the 290,000 parcels of prematurely subdivided land in these municipalities, over one half were delinquent.

Wildcat subdivision is not the only form of over-intense land use. In the downtown areas, high land prices often lead owners to over-build and over-use the land, in order to meet fixed charges. Up go theatres,

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* Premature Subdivision and Its Consequences, New York State Planning Council, 1938.

office buildings, apartments, in an attempt to justify excessive prices and capitalize on congestion. Whether these new ventures in over-development succeed or fail is of about equal concern to the city: if they fail, their taxes go unpaid; if they succeed, they do so at the expense of other taxpayers, who cease being taxpayers. There is hardly a city in America today without its spectacular white elephant -- its Waldorf-Astoria or tis Empire State Building. A study of urban tax delinquency by the Department of Commerce in 1934 revealed that tax delinquency was highest among those classes of property most likely to represent unwise intensity of use: vacant lots led the field with a median delinquency of 31%, followed closely by apartment houses, multiple dwellings, and hotels, with median rates of delinquency of 28%, 24%, and 21% respectively.

The seriousness of urban tax delinquency becomes apparent when we remember that the real property tax is almost the sole source of income for most American cities. Real property delinquency of 5%, for example, will curtail revenue by as much as 3½%. This loss must be met by borrowing (at interest) or raising the tax rate on the remaining (non-delinquent) properties. A curtailment of 5% or even 10% in the municipal budget may not seem serious to the outsider, but any municipal official who has tried to reduce expenditures by even 2% or 3% realizes its gravity. During the depression, tax delinquency in American cities reached alarming heights. The median year-end tax delinquency for 150 cities over 50,000 population

reached 20% in 1932, rose to 26% in 1933, and fell back gradually to 11% by 1938.* The twenty cities showing the greatest fluctuation in tax receipts had a median delinquency of 40% in 1933, and even the twenty cities with the best record had a median delinquency of over 10%. In 118 of these cities, the ratio of total back taxes to current levy was 48.6% for 1938; or that is, the accumulated tax arrears amounted to almost one half of the 1938 tax levy. In nine cities** the ratio was over 100% -- uncollected taxes, that is, exceeded the current (1938) levy. Only six cities (Berkeley, Binghamton, Birmingham, Fresno, Sacramento, and San Francisco) had a ratio of less than 10%, averaging 7.2%. Even arrears of 7.2% are serious: Birmingham's whole health and sanitation program represents only 7.1% of its annual budget, and San Francisco finances all its library and recreational facilities with 7.1% of its budget. When we consider the cities whose accumulated tax arrears, at the depth of the depression, ran from 50% to 100% and even 150% of current levies, we have a partial explanation of the fact that in February 1933, there were over 1,100 local governments in 42 states which had defaulted on their bonds or other obligations.***

The Cost of Government Services

The obverse face of the tax delinquency problem is the question of municipal expenditures. If the patterns of urban expansion leave property unable to meet its taxes, does it also raise the cost of servicing these properties?

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* Bird, Frederick L. The Trend in Tax Delinquency 1930-38 Dun & Bradstreet, (N. Y., 1939).

** Ashville, Beaumont, Camden, Jacksonville, Norfolk, Pontiac, San Antonio, Tampa, and Youngstown.

*** Clark, Evans, Internal Debts of the United States.

The answer seems to be Yes. When a city expands haphazardly, leaving in its wake a trail of blighted areas, slums, sterile subdivisions, and vacant lots, this is reflected in an unnecessarily high cost of government: utilities have to be piped past vacant land and vacant houses to new areas; policemen must patrol, and firemen protect, houses scattered at a density of three or four to the block; public works departments must maintain more miles of street per resident; refuse and offal must be collected over longer routes; old schools and libraries must be abandoned as population spreads outward, and duplicated nearer the peripheries.*

All this is aside from the high costs consequent upon overcrowding, which occur even under patterns of orderly expansion. Per capita costs of many services rise sharply as population concentrates -- police, fire, and health are notable examples. The mere diseconomies of concentration, aside from inefficient patterns, are sufficient to double or treble the per capita costs of government. A preliminary study of 355 municipalities in Massachusetts (conducted in 1937 under the direction of the Harvard Graduate School of Public Administration) showed a rise in total per capita cost of government from about $20 in cities from 5,000-10,000 to about $75 in cities over 100,000. But in addition to this, the cost of urban government is intensified by the disorderly patterns of expansion.

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* New York City, for example, has more school seats than school children, but they are improperly distributed.

Most students of municipal finance have long realized that certain sections of the typical city did not "pay their way", but few realized the extent of this economic drag until several American cities conducted Cost and Income Surveys under the ERA and WPA programs. A cost and income survey consists of analyzing the income from, and the costs allocable to, given sections of the city (usually census tracts). Certain of the costs may be charged directly to each tract, and the remainder are allocated on the basis of population, dwelling units, area, street mileage, or some other appropriate factor. Income (in the form of personal or real property taxes, etc.) are similarly traced to their source.

As an example, consider Boston: a relatively mature city, long past its period of rapid growth, regional capital of the relatively stable New England area, with fairly diversified industrial, commercial, and business activity.

The Boston survey* revealed that only 26 out of 127 census tracts actually contributed more to the city's treasury in taxes than they took out in services. Those 26 tracts, moreover, contributed enough to show a net revenue for the whole city. The 26 profitable tracts were distributed (in terms of the principal land use in each) as follows:

Wharves and railroad yards	6
Business and retail stores	6
High rent housing	5
Industry	4
Miscellaneous housing	5
Total	26

* Boston City Planning Board, The Income and Cost Survey of the City Boston, Boston, 1935. ERA Project #X2235-F2-U46.

Geographically, the distribution was even more striking. The areas returning the heaviest net returns were closely concentrated in downtown Boston -- along the waterfront, near the terminals, and in the shopping and hotel area. The next most profitable groups were industrial and waterfront property of the secondary port area, and the high class residential properties of the Back Bay. The other 101 census tracts represented a net loss to the city. These fall into two groups: the areas of heavy loss, near the center of town -- congested slums or near-slums filled with low-rent housing; and larger areas of lighter loss stretching right out to the city limits, filled with medium-cost housing.

Now, one hardly expects slum areas to be self-supporting. They receive government services, not because they can pay for them, but because they cannot pay for them. Our social conscience makes us provide the lowest income groups with at least pure water, schools, and paved streets. But it is a little shocking to see subsidization of the "normal" areas of housing and small businesses, filled by middle-income classes and neighborhood stores, which constitute a majority of the city's area. If they cannot pay for the services of municipal government, there is something pathological in the picture.

The pathological element is urban blight. In Boston, as in so many other cities, the active residential area, which is increasing in value and paying its taxes, is already beyond the municipal boundaries: what is left is blighted. The core has stopped growing; the active periphery is farther and farther away, and blighted areas occupy a major portion of the city's area.

New Conditions

There is nothing new about the problems that beset the American city today. Every one of them, in some degree, has bothered the city officials of the past: premature subdivision, overdevelopment, overcrowding, blight, slums, high cost of government, tax delinquency, mortgage foreclosure: all have been endemic, epidemic, or chronic.

What makes these problems more serious today than ever before is the emergence of new conditions surrounding urban growth and the demand for urban land. Says Lewis Mumford* "In almost every country except Russia the tapering off process has begun for the population as a whole.... Hence the flood of people who imperiously demanded urban accommodation during the nineteenth century has spent its force. Throughout the world, if this movement keeps up, the metropolitan economy will have to adjust itself to the fact of a relatively stable population and a relatively fixed market: an end to its hitherto boundless financial increments."

Adjustment to a stable population makes the urban land problems we have cited a good deal more difficult. In the past the problems have been solved, essentially, by ignoring them until they died. Premature subdivisions were eventually settled or circumnavigated because the pressure of population made it necessary to do so. The tax delinquency of each depression disappeared during the succeeding booms, and the city more often than not realized speculative profits on foreclosed properties. Overcapitalized land holdings in bankers' portfolios were always lifted off

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* Mumford, Lewis, The Culture of Cities, p. 282.

the rocks by the rising tide of values. Congestion was considered a sign of civic progress. Blighted areas evaporated as business and industry moved out from the cores of our cities, and slums were but the immigrant's ante-chamber to the American Standard of Living. But today, the end of the national population increase is in sight. Whether our cities have a larger or smaller share of the national population than at present, their populations too are approaching an upper limit. Industry is decentralizing, not only into new sections of the nation, but also to the peripheries of metropolitan areas where they escape the excessive land costs and taxes of the central cities. More and more retailing activity is finding its way into suburban centers. The increasing speed and availability of freight and passenger transportation makes urban location less necessary to worker and employer alike. Long-distance transmission of electric power is emancipating power consumers from the coal siding and the waterfall. The cultural, social, and economic advantages of the city diminish every day, as its disadvantages increase. He would be an optimist indeed who could honestly predict a return of the Golden Days, for the fundamental conditions of urban growth have changed.

"The Golden Age is past" says Charles Abrams* "-- irrevocably past. Few see the situation in its full perspective, or realize the appalling extent of the parallel changes now under way in the position of all types and classes of land -- farm land, grazing land, gardening land, suburban

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* Abrams, Charles, The Revolution in Land, p. 212.

lots, factory sites, apartment house sites, store, office building, warehouse sites. Oversupply in all, overdevelopment in all, bitter and relentless competition in all with marginal and submarginal parcels, marginal and submarginal producers, who stubbornly fail to realize when they are economically dead according to the rules of the game. Hypertrophy of the network of municipal facilities..., a tax load which bears with crushing force on real estate, regardless of income, oversupply of almost every type of urban building.... The land -- all types of land -- encumbered with the heaviest mortgage load in history.... Immigration stopped. The birth rate sinking. The family growing smaller.... Millions of acres hopefully held for the surge of population we know will never arrive and land values fixed by communities on the basis of expectations never to be realized."

"Every phase of our land policy" Mr. Abrams continues* "has been geared to the anticipated trend of steady and uninterrupted expansion continuing on into the indefinite future.... The principal motive force of this mechanism of expansion, the main ingredient in the fuel that drives this vast engine, is the increase in population.... Now the fuel is given out. The machine is running on its own momentum in large measure....

"Suitable land for building sites is so abundant that only a small fraction of it can ever be used to meet the demands of the present and future populations. More intensive utilization is capable of reducing materially the need for urban land. Urban expansion is therefore destined

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* Ibid, p. 277-8.

to cease, just as agricultural expansion did shortly after the war. With a stationary, or even a declining population, there must be a sharp change in the development of urban land uses, commercial and residential."

To date, as Mr. Abrams points out, our policies and plans have been predicated on infinite expansion. After every crisis, the patient has recovered by his own recuperative and regenerative powers. The plight of our cities today is a matter of national concern, and our urban land problems must be met by a truly national land policy. Yet today there is no national land policy. There is not even a Federal land policy, nor State land policies, to say nothing of national land policies, objectives to strive for and methods of achieving them, agreed upon by all agencies of government.

What then is the role of Land Acquisition in a National Land Policy if there is no policy? Land acquisition is one instrument of land use control, one tool in a kit of tools which does not attain its greatest usefulness, it is true, until the objectives of land use policy have been determined. It is also true that the whole is made up of its parts, and that the nation may outline its land policy more easily when it understands the tools it has to work with. This report is an attempt to assess public acquisition of urban land as an instrument of land use adjustment, and to suggest objectives which that instrument might serve.

CHAPTER II

URBAN LAND USE CONTROLS

Human beings will always seek to get what they want with the least possible effort. This rule of action accounts for much of the slipshod work of the world, as well as for the painstaking attainment of impelling needs.

Both individual actions and public procedures are subject to this rule. That fact, however, is no criterion of the intelligence of such actions and procedures. Sprawling, haphazard growth has characterized most American cities because of the desire of their developers to accomplish their objects with a minimum of exertion and restraint. But the alarming spread of urban blight and slums is gradually causing municipal officials and civic organizations to discover the urgency of adequate controls of land uses. Thus steering replaces drifting, and added exertion is seen to be essential for both individual and community welfare. Our impelling rule of action still decrees, however, that this new demand shall be achieved with as little waste effort as possible.

What types of control are available, and how can they be applied more effectively?

1. Zoning.

Today a city can no longer boast that it is "zoned"; such boasting is justified only if it is zoned intelligently. Almost every zoning ordinance in the United States needs drastic revision. This statement

should not be interpreted as unduly critical of a movement which in its comprehensive form is less than a quarter-century old in the United States. The mere adoption of the zoning principle by local enactment in more than a thousand American municipalities since New York's pioneer "Building Zone Resolution" of 1916 is a remarkable record. But the compromises and shortcomings of New York's regulations were imitated much too generally, not only by other large cities but by smaller communities.

To increase the effectiveness of zoning as a device for the control of urban land uses, most municipalities need: (1) prevention of the absurd degree of land-overcrowding now generally permitted; (2) a drastic reduction in the size of districts zoned for industrial and business uses - with care, however, not to go to the other extreme of creating an approach to monopoly for owners of land available for such uses; (3) less "spot zoning" and more positive steps towards gradual elimination of non-conforming uses; and (4) a higher grade of local administration of the zoning ordinance, under which variances and exceptions will not be granted with little regard to the general good of the community. There is too much truth in the statement frequently voiced privately, but rarely stated publicly, that in too many communities zoning has become a political football.

2. Platting and Subdivision Regulation*

Experience with the wide diversity of control - or lack of it - effected through platting and subdivision regulations in the various states,

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* This subsection is based largely on a memorandum, dated May 28, 1940, from Seward H. Mott, Director, Land Planning Division, Federal Housing Administration.

has led the Federal Housing Administration to favor strongly the type of control enacted in 1938 by the New York State Legislature. These regulations prohibit the speculative selling of residential lots by metes and bounds and provide a method of control of unwarranted subdivisions through the requirement that the street improvements must be completely installed by the developer. This provision is particularly effective in controlling wildcat speculative selling of lots, but it must be applied with discretion. The street and utility regulations can be made so severe that the front-foot cost is raised to a figure so high that only fairly expensive homes can be constructed.

In one city it is reported that the improvement requirements are so drastic that it costs approximately $15 a front foot to install them. This is forcing citizens who wish homes under $7,000 or $8,000 to move into semi-rural areas beyond the city limits. A policy of this kind tends to accelerate the decentralization which is creating such a serious problem for many cities. The type of improvements required for minor residential streets must take into consideration the ability of the average citizen to pay. While shoddy construction should not be tolerated, there is a happy medium which can usually secure adequate street improvements for minor residential streets for around $6 a front foot.

A type of land-use regulation too seldom applied is that of protective covenants as a blanket encumbrance against the entire subdivision.

Covenants of this kind can control the details of land use in a way that a zoning ordinance seldom can. This is a method of control that the Federal Housing Administration applies to all undeveloped areas in which applications for insured loans are made.*

3. Building and Plumbing Codes.

Not only do our zoning ordinances need modernizing and our methods of subdivision control need rationalizing; our building codes need strengthening in some cases and liberalizing in others. According to the 1940 Municipal Year Book, about 20 per cent of the 1,500 building codes in force in the United States are between 15 and 20 years old.

The primary purpose of a building or plumbing code, of course, is to prevent jerry-building and to provide higher standards of safety and sanitation than would otherwise prevail. But, as in the case of subdivision regulations, restrictions may be so severe as to make building costs - and hence rent scales - needlessly high. Milwaukee is often cited, and properly so, as a city with an exceptional record of enforcement of the demolition provisions of its building code. Real progress is thus being made towards slum clearance at minimum public cost. But the other side of the picture is pointed out by City Attorney Walter J. Mattison, who reports that the high standards for new construction in Milwaukee's building code prevent many citizens from taking advantage of FHA insured mortgages. Mr. Mattison estimates that 25,000 houses in the $2,500 class would be constructed in Milwaukee within three years if certain building

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* See appendix A.

code requirements could be relaxed. As it is, prospective owners go beyond the city limits, and thus beyond these restrictive codes, to build low-cost homes.*

The present report is no place, of course, for any attempt to evaluate, for any given city, the extent to which low standards of construction are more to be feared than high costs of building. But the subject is one which merits research in every city, for the happy medium which will best conserve the public welfare.

4. Subsidies and Inducements.

Direct subsidy affecting the control of land uses by private corporations is little used in the United States, but indirect subsidy through partial tax exemption is becoming increasingly common, especially as a method of aiding large-scale housing developments. New York State adopted as long ago as 1926 a State Housing Law authorizing municipalities to grant, for a period of years, tax exemption on improvements (but not on the land) to limited-dividend housing corporations functioning under certain regulations and restrictions. In 1938 the New York State Constitution was amended, and in 1939 a Public Housing Law was enacted giving similar tax exemption to limited-dividend housing companies coming under the control of the new State Division of Housing. Legislation authorizing savings banks and insurance companies to go into the housing business with similar privileges and restrictions was enacted in 1940. Local City Planning Commissions also exercise a considerable degree of control over land

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* See "Building Codes Kill Low Cost Housing", by Walter J. Mattison, in Municipalities and the Law in Action (1939).

uses in projects aided by this indirect subsidy - thus making partial tax exemption a potent method of land use control.

Direct subsidies from the Federal Government, through the United States Housing Authority, are now being granted to, or are definitely earmarked for, nearly 500 public housing projects, in not less than 200 cities, large and small, in 35 states. Without such subsidies none of these projects, housing more than 160,000 families, would have been erected. In every case the street planning, density of coverage, provision for recreation areas, and other phases of land use have come under the joint control of local governmental agencies and the USHA. Here is a very direct relationship between subsidies and land-use control.

5. Taxation*

The long-run effects of methods of taxation cannot safely be ignored in any realistic consideration of the factors which must affect the establishment of any municipal land policy whatsoever. This is true whether that policy be limited to acquisition and development of lands for low-rent housing; whether it be broadened to include acquisition of municipal land reserves comparable to those maintained by many European cities; or whether all lands within a municipality, both in public and in private ownership, are to be brought within its scope.

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* This subsection is based on a portion of an article on "Land Reserves for American Cities", by Harold S. Buttenheim and Philip H. Cornick, published in the Journal of Land & Public Utility Economics for August, 1938.

It is possible to levy taxes in such a way as (1) to increase the cost of food, clothing, and fuel, thus reducing the margin of personal income available for payment of rent or for capitalization into the purchase price of a home; (2) to increase the cost of the labor and the materials which enter into the cost of construction; and (3) to increase the cost of operating and maintaining buildings. Any system of taxation which does these things makes it more difficult for private builders to meet the housing needs of the lower-income groups, and enlarges the field within which government subsidy is required. At the same time - all other things being equal - this kind of tax system makes it easier for private owners to hold well-located and desirable lands out of use, and therefore increase their bargaining power when builders negotiate for sites, whether those builders be private individuals or public agencies.

The importance of taxation in the problem of slum clearance can hardly be overestimated. The replacement, by unsubsidized private initiative, of old and obsolete buildings by modern buildings will, under our present tax system, lead inevitably to a substantial increase in the annual tax bill on the property. The better and more adequate the building which replaces the slum, the greater the increase in the recurrent annual bill for local taxes. Only philanthropists, therefore, and few of them, will undertake such operations for low-rent housing when they know in advance that increased taxes on the property must be deducted from the rigid gross

rents per unit before any allocations can be made to operation and maintenance, or to the fixed charges on invested capital. In short, we subsidize those who maintain slum dwellings and penalize those who would replace them. As long as we persist in maintaining this absurdity in our existing tax system, we shall make little progress in clearing our slums beyond the extent to which the Federal Government or the States take over the task or provide subsidies sufficient to offset the effects of the penalties imposed on the private builders who might otherwise attack the problem as a business venture.

So much for the negative effects on municipal land policy which inhere in our present system of taxation. On the other hand, it is possible to devise a system of local property taxes which would decrease costs of construction, as well as of operation and maintenance, and thereby increase industrial activity, employment, and the effective level of wages. Progressive lowering of the tax rate on all buildings and increasing the tax rate on land would decrease the tax burden on home owners and on tenants of low-rent housing projects and would advance the public welfare by penalizing those who would hold desirable land out of use in order to speculate on the chances for sale at a profit when more intensive uses become possible. It would thus become an effective weapon against the forces which today make almost impossible the public acceptance of a zoning ordinance that does not set aside for business, for multi-family residential uses, and for single-family uses, larger areas than can ever be used

for those purposes; and which enable holders to maintain the prices of unused or partially used lands in each zone at levels so far above capitalized earning power that adequate development of the lands becomes economically impossible.

6. Public Ownership

Obviously, no method of public restriction of land privately owned can control land uses as positively and permanently as is possible under public ownership. Objectives of public land acquisition, and the place of land acquisition in a program of urban land-use control are discussed in the next two chapters of this report.

CHAPTER III

OBJECTIVES OF PUBLIC LAND ACQUISITION

Every time a lot is sold and a structure is erected on it, land-use planning - of a sort - is practiced. To oppose all planning of land uses is to advocate stagnation and decay. The question is not, shall land planning take place?; but, who shall do the planning and under what standards and controls?

Opposition to the activities of city planning commissions and to the enforcement of zoning ordinances is often based on the fear of restriction of individual "rights". The protective features of planning and zoning regulations are too seldom emphasized. It is certain, however, that in every community the persons who would welcome freedom to use their property in an anti-social manner are vastly out numbered by those who would prefer protection against anti-social uses of property by others. For many urban needs this protection of the public interest can be made reasonably adequate by intelligent public control of private land uses; for other urban needs the actual acquisition of land by public agencies is the essential or safer course.

A. Acquisition For Sites

The space limits of this report do not permit a detailed discussion of the many uses to which publicly owned land is being, or might be, put.

A mere check list of such uses may be valuable, however. Such a list follows under four classifications, the border lines between which are, of necessity, rather hazy. No attempt has been made to evaluate the comparative importance of the uses listed under each heading. Some of them are found in every municipality; for others the need is very limited; while others now rarely found might well become much more common.

The four classes are:

1. Customary Public Uses - those which some unit of government, national, state or local, customarily provides without a direct service charge. Some of these have emerged within this century, but are well established and accepted by the people.

2. Quasi-Public Uses - those for which the public ordinarily receives returns for its services which pay their cost in full or in part. Some of these uses have developed very recently, or exist as yet in only a few communities.

3. Emerging Public Uses - those which are gradually evolving with the expansion of governmental activities, and which may be operated directly by a public agency or by a private agency under special public control.

4. Emergency Public Uses - those which arise temporarily under the pressure of abnormal conditions.

1. Customary Public Uses:

a. Public Structures

Schools
City halls
Courthouses
Public office buildings
Fire stations
Police stations
Sewage-disposal plants
Incinerators
Homes for aged or indigent
Libraries
Museums
Recreation buildings
Armories
Prisons
Forts and army posts
Postal stations
Health centers
Public rest stations
Municipal garages and repair shops
Municipal storehouses
Dikes
Statues, monuments and fountains

b. Public Areas

Streets and alleys
Parks
Playgrounds
Canals
Cemeteries
Reservoirs
Municipal forests, wood lots and nurseries
Fair grounds
Town commons
Public gardens
Airports
Public beaches
Zoological gardens
Parade grounds
Poor farms
Refuse fills

2. Quasi-Public Uses:

Utility structures and rights-of-way
Water
Electricity
Gas
Transportation
Hospitals
Abattoirs
Docks and piers
Public markets
Municipal gravel pits and quarries
Asphalt plants
Hog farms
Stadiums and auditoriums
Swimming pools
Filling stations (for public freeways)
Mausoleums and crematories
Central steam heating
Public golf links
Municipal milk plants
Public laundries

3. Emerging Public Uses

Public housing
Parkways and freeways
Parking areas
Tourist and trailer camps
Radio towers
Air beacons
Aviaries
Aquariums
Botanical gardens
Artificial lakes
Made land on waterfronts
Picnic grounds
Band stands and shells
Municipal theaters and amphi-theaters
Greenbelts
Oyster beds
Fish hatcheries
Wild game preserves
Municipal land reserves

4. Emergency Public Uses

Dams, dikes and lakes for flood control
Allotment gardens when food shortages threaten
Areas for possible war emergency needs, such as cantonments, land for new armament plants, landing fields, drill grounds, etc.

The Concept of Public Purpose

The concept of the term "public purpose" or "public use", in its relation to slum clearance and housing, has broadened greatly under the legislation and court decisions of the last seven years.

In 1932 Newman F. Baker, Murray Seasongood and Lawrence Veiller prepared a joint statement on "Some Legal Aspects of the Slum Problem", which was published as an appendix to the volume on "Slums, Large Scale Housing and Decentralization" of The President's Conference on Home Building and Home Ownership. Based on the then existing laws and decisions, these three authorities said:

> "It is believed that there is no warrant in the Constitution of the United States for the issuance of long-term bonds to aid in rebuilding the states. It does not appear to be included within any of the powers granted to the Federal Government by the states. The Federal Government possesses only those powers expressly or impliedly conferred upon it by the United States Constitution. Any action by the Federal Government in a field not covered by the constitutional grants is void. The Federal Government has no police power, as such".

As to the exercise of eminent domain by local public bodies for housing site acquisition, Messrs. Baker, Seasongood and Veiller said:

> "There would seem to be little doubt that public authorities, the state, county, or municipality may exercise the power or eminent domain to acquire sites now occupied by undesirable of slum dwellings for the purpose of turning such sites over to private enterprise for development of suitable residences, since the right of eminent domain is granted to limited-dividend corporations, and is the basis of excess condemnation. The question is whether or not the acquisition of such sites is a public purpose for which this power may be exercised, and for which public funds may be utilized. What is a public purpose cannot be defined with great definiteness. Decisions of the courts vary. In a review of them, however, we must consider the trend of public opinion in matters having a large social significance....

"Some state constitutions would have to be amended if the power of eminent domain were to be used to acquire sites for housing developments. However, this use of eminent domain would not conflict with Federal constitutional guarantees which provide that property shall not be taken without just compensation or without due process of law and that private property may be taken only for public purposes. These provisions are sufficiently broad to accommodate this proposal.

"Here again, the only way to determine what can be done with this method of site acquisition is to carefully work out the proposed authorization, apply it judiciously and, if questioned in the courts, extend every effort to support its validity."

This in 1932. In 1938, in Urban Blight and Slums, by Mabel L. Walker and others, the question of whether the power of eminent domain may be exercised to reclaim a slum, to rehabilitate a blighted area, or to provide for low-rent housing projects, was discussed by Ira S. Robbins, now counsel for the Division of Housing of the State of New York. To quote in part:

"The constitution of practically every state requires that the exercise of the sovereign power of eminent domain be limited to the acquisition of property for a public use, and upon payment of just compensation. The courts have never been able to formulate a comprehensive or satisfactory definition of the phrase 'public use'. The decisions present two sharply divergent points of view. The narrow and conservative view usually requires that the object for which the property is taken must be one which the public is entitled to use as a matter of right, such as parks, playgrounds, and highways. It also recognizes objects which are available to the public on a common basis, as where property is taken for railroads, water systems, electric light plants, and other public utilities. The broader view interprets the phrase in the light of the public advantage or welfare of the particular project involved in each case. No court would uphold the compulsory taking of one man's property and its gift or sale to another for the latter's exclusive use for purposes not affected with a public interest. But as soon as the use for which the property is taken is deemed to be affected with a public interest, then the question arises - Is it for a public use? The extent of the public interest is the important factor, but there is no known measuring rod to indicate when a project passes from the 'private' into the 'public use' stage.

"The courts of some states have consistently taken the narrow view, others the broad view, and many of them have been inconsistent and muddled. The liberal decisions have gone so far as to uphold the condemnation of property by a mining company in order to have access between its mines and a near-by railway. They have sustained the power of eminent domain which has been given to irrigation districts and to private landowners to obtain a right-of-way for a ditch over neighboring land for purposes of irrigation. Drainage districts incorporated to bring about the improvement of large areas have been given the same power. The power is often used for the purpose of reclaiming waste or swamp lands.

"Out of the mass of conflicting interpretations and decisions, certain principles stand out, common even to many conservative decisions. Public use is not limited to cases of occupancy by public officials themselves in the performance of their public duties, nor is it limited to occupancy by or consumption by large numbers of persons. It is not restricted to cases where the occupancy or use of the proposed structure, facility, or service will be open to anybody and everybody. In the language of Mr. Justice Holmes, 'the inadequacy of use by the general public as a universal test is established.' The courts have further held that public use is not limited to business or economic purposes or purposes of convenience. They have held that payment of rent or other compensation for the use does not deprive it of its public nature. Finally, they have pointed out that it is not restricted to past performance but expands to meet new needs, and depends on the circumstances at the particular time and place when the question arises.

"Whether or not the condemnation of land for low-rent housing developments is a public use, is a comparatively new issue before the courts. Under the narrow interpretation it is primarily a taking of one man's property in order to provide a home for the exclusive use of another, and the social or economic benefits, if any, are incidental and inconsequential. If the government may go into the business of supplying shelter, then there is no limit to what it may ultimately supply. It may furnish food, clothes, tools, automobiles, and other items that a legislature considers necessities and ultimately in the public interest. Such a program strikes at the fundamental American practice and tradition of obtaining the necessities of life through individual initiative, and puts the government into competition with private industry. So runs the narrow view.

"The broad view, however, considers the social and economic consequences of slum conditions and inadequate housing accommodations which prevail on a tremendous scale throughout the country. These conditions foster disease and high mortality rates, and reduce the standards of health and physical well-being, directly affecting a

large percentage of the population and indirectly affecting entire communities. The conditions are productive of juvenile delinquency, crime, immorality, and social unrest. They affect the standards of public morals and the general welfare. They throw a heavy direct financial burden on whole communities. Although many areas in cities do not bear their share of the costs of the public services rendered to them, the deficit in slums and areas of bad housing is excessive. The increased costs for hospitalization, fire and police protection, and the like, add to the burden of all the taxpayers.

"That the use of the power of eminent domain is necessary in order to obtain a result which is in the public interest, is a factor which the courts have taken into consideration in other cases. This necessity often arises, as we have previously pointed out, because of 'hold-outs', sentimental attachments, and defective titles.

"The fact that private capital has been and is obviously unable to produce decent accommodations for those in the lowest income brackets, is of utmost importance. The states and cities have exercised their police power in enacting tenement-house laws, building codes, zoning and planning statutes, state housing laws providing for limited-dividend corporations, and the like, in order to attempt to remedy the situation, but these have been inadequate. Public housing legislation enacted by many states and the nation is evidence of the necessity of low-rental housing.

"If the question is approached with the foregoing facts in mind, and public use is interpreted in the light of public utility and welfare, then the validity of the provisions for condemnation for housing purposes by state and city agencies is clear. The benefits to the private individuals who will live in the new accommodations are incidental and do not invalidate the primary public aspects of the undertaking.

"So far we have discussed the use of eminent domain chiefly for low-rent housing, as distinct from slum clearance. If a project involves the clearance of a slum (irrespective of whether or not the property is later used for housing purposes), the case for eminent domain may be still stronger, because the removal of a slum is obviously primarily for the benefit of the general public with less likelihood of direct benefits to private individuals than in the case of low-rent housing. It is also significant that slum clearance and low-rent housing have a public factor in that they involve city planning and replanning and the locating and integration of streets, recreational spaces, and other public places. Many courts have looked favorably upon the efforts of state and city agencies in their use of the power of eminent domain in working out similar planning problems."

In May, 1940, the Citizens' Housing and Planning Council of Detroit, Michigan, issued in mimeographed form an article, written for the Journal of the American Bar Association by Vance G. Ingalls, Assistant Corporation Counsel of Detroit, under the title of "A New Remedy for an Ancient Evil." In this, significant excerpts are quoted from the decisions of state supreme courts upholding the legality of public housing and slum clearance as a public purpose.

"From temporary, emergency legislation to permanent law in 38 states, nearly 300 cities, towns and local communities and accepted by 20 Supreme Courts as a proper constitutional function of government in less than 7 years," says Mr. Ingalls, "is the record of public housing and slum clearance legislation. It is doubtful if any other law has ever achieved such unanimous approval in so short a time by so many courts in the history of this country.

"The states and the nation are here functioning to achieve and end 'more than the avoidance of pestilence or contagion. The end to be achieved is the quality of men and women.... If the moral and physical fibre of its manhood and its womanhood is not a state concern, the question is -- what is? The voice of the courts has not faltered for an answer'. -- Justice Benjamin Cardozo in Adler v. Deegan, 255 N. Y. 457."

Among the questions decided by the state courts, all in favor of the constitutionality and validity of housing and slum clearance acts, as summarized by Mr. Ingalls, are:

The acts are for a public purpose.
The laws are not class legislation.

They do not constitute an illegal delegation of legislative authority or discretion.
The power of eminent domain may be given to Housing Authorities.
The tax exemption of property and loans of housing authority is legal.
The agreements of cities to eliminate unsafe and insanitary dwellings are valid.
The Congress has power to provide federal aid for the projects.
The acts are not in violation of due process or equal protection clauses of Constitutions, State or Federal.
The projects may be built in any area of city, vacant or slum, in sound discretion of Federal and city authorities.

The growing concept of public purpose is emphasized in several of the decisions cited. For example:

Tennessee--"The novelty of a purpose does not render it the less a public purpose. The conception of a public purpose must necessarily broaden as the functions of government continue to expand. We are satisfied, therefore, that the purpose for which a Housing Authority is created is properly a public purpose and that such an entity serves a public use."

--Knoxville Housing Authority v. City of Knoxville, 123 S. W. 1085 (Jan. 1939).

Missouri.--"Appellant says that in determining whether the declared purposes of the Housing Authority are public functions we must be guided by a consideration of 'whether the activity to be undertaken is, according to history and the common acceptance of mankind, one for public action of private enterprise, and whether the public generally, or only a limited group, is benefited thereby'? To this we do not agree. To be guided solely by whether a given activity had, at some previous time, been recognized as a public purpose would make the law static. Such a standard would compel us to retain in the law, as appropriate for public expenditure, activities which have ceased to be of public concern; and would prevent us from adopting new public functions regardless of how essential to the public welfare they may have become by reason of changed conditions. Nor can we be governed alone by the fact that only a portion of the public will be directly benefited, or benefited in a greater degree than the public generally."

--Laret Invest. Co. v. Dickmann (Dec. 1939)

B. Acquisition For Land-Use Control

That the problems stressed in this report are being more generally faced than heretofore is evident from the extent to which cities in

increasing numbers have been evolving programs for the systematic development of the whole community through public land acquisition and more adequate control of the use of privately-owned land. Such programs have included, among other phases, improved subdivision practice to meet the needs of the motor age; widening and extension of streets; acquisition of needed park and playground areas, civic centers and school sites; separation of street and railroad grades; improvement of waterfronts; protection against floods; rounding out of port and harbor facilities; location of bridges and tunnels; construction of rapid transit lines; and provision of passenger and rail terminals. The first four decades of the twentieth century have thus laid the foundations of the art and science of city planning as we know it today.

Each plan as it was formulated, however, displayed defects in the legal machinery utilized to achieve these projects. Cities grew rapidly, yet the law moved slowly; long, tedious delays swelled costs which were already burdensone; when the law finally moved, the costs were in many instances prohibitive. New remedies must be found. The answer is being sought in various directions: more effective legislation; more drastic zoning ordinances; the establishment of master plans with legal sanctions; extra-territorial jurisdiction of city plan control; county and regional planning; improved methods of eminent domain; excess condemnation; scientific systems of assessment and taxation; and acquisition of municipal land reserves.

Replanning Old Areas

Until complete figures are available from the 1940 decennial census, the extent of the slowing up of urban growth, and of migration from the older sections of cities to their fringes or suburbs, will not be known. Figures thus far released (July , 1940) covering _____municipalities of from_____ to_____ inhabitants show an average population gain of only _____ percent for the 1930-40 decade, as compared with_____percent increase during the preceding ten years. The flight of families from blighted and slum areas and the failure of these areas to attract new residents will certainly be found to be an important element in this slowing up of urban population gains. The replanning of decadent urban areas to provide decent housing and neighborhood conditions is thus seen to be a major problem for municipal governments, not only from the point of view of the humanitarian, but from that of the political scientist, the landowner, the merchant, and the banker.

Current efforts here and there show realization of the fact that greater municipal economy will result from improving inner areas than from continued subsidies to sprawling outlying areas. It is increasingly recognized also that improvement of single parcels is ineffective in slum and blighted districts and that disintegrating elements can be eliminated only through large-scale improvements. Outmoded street systems must give way to neighborhood planning. Real estate, suffering from the evils caused by speculation, is searching for a means to assure neighborhood stability through the designing of each neighborhood as an entity for its most available and desirable use.

The concept of self-contained cell as the basic element of a city is appearing both in planning proposals and as a recommended subject for urban research. Planners, lenders and real estate developers are beginning to see its advantages. These include: safety, and elimination of the waste caused by traffic congestion; civic benefits, through the natural growth of social organizations; municipal economies, through the stabilized use of public schools, playgrounds, utilities, etc.; stability of property values, because of control over disintegrating elements; the provisions for open spaces at a minimum cost to the developer and to the municipality, by means of savings in street area possible in large-scale planning.

The greatest single handicap to an effective attack on this problem of neighborhood rebuilding by private initiative is the difficulty or impossibility, under existing laws and procedures, of large-scale land assembly. This handicap will be overcome in some instances by conferring the power of eminent domain on private corporations under strict public regulation, as New York has done in its Public Housing Law as enacted in 1939 and amended in 1940.* The proposals of the Merchants' Association of New York for an "Urban Redevelopment Corporations Law" and of the National Association of Real Estate Boards for a "Neighborhood Improvement Act" merit careful study.*

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* See Appendix 3.

No powers that can be safely conferred on, or that are likely to be largely exercised by, private corporations will bring about the rebuilding of the slums and blighted areas of our cities as speedily as the public interest demands. Some parts of the task must be assumed by governmental agencies. Whoever does the job in any given case, land acquisition will be essential; and the temporary retention in public ownership of tax-abandoned land in areas designated by the local city planning commission for redevelopment may prove to be a substantial aid towards the carrying out of large-scale projects.

Controlling New Areas

A much more simple and economical proposition is the controlling of the uses of areas heretofore undeveloped. Here the problem is not one of destruction, securing cooperation, and then construction; it is simply a problem of construction, preceded by the planning and the financing that must take place in either case. Although the American tradition of turning land use control over to private speculators and allowing uncontrolled development is proving difficult for most states to overcome, thought is being given to the problem and new trails are being blazed.

The ancient use of greenbelts, which surround the medieval castle and later surrounded Elizabethan London, has been temporarily forgotten in the development of our conurbations. Now that public policy is again becoming concerned with land utilization, the greenbelt is returning to our communities as a reality in a few cases and an aspiration in others. The

three Resettlement Administration towns - Greenbelt, Green Hills and Greendale - in this country, and the English garden cities of Letchworth and Welwyn, have been planned to embody this principle.

The greenbelt idea rests on the proposition that solidly built-up cities can be too large, that definite limits of expansion must be assigned, and that further growth in the region must take place in outer satellite communities separated from the central city and from each other by wide green spaces. This method of city growth is to be effected by the acquisition of a wide band of unbuilt land surrounding the city from which close building development is permanently banned. All communities that threaten to become too large should be thus "corseted" by open fields, much as medieval fortification kept towns from sprawling into the surrounding countryside.

A greenbelt not only limits the size of a community to a desirable maximum, but protects it from inharmonious encroachments. The greenbelt also provides much-needed breathing space to congested urban areas - a place where the smoke, dirt, and grime of the city are dissipated and the oxygen content of the air is renewed. In the greenbelt might be located playing fields, golf courses, lakes for boating and swimming, allotment gardens, larger farms, meadows and forests. The beauties and advantages of the countryside would be preserved on the very doorstep of the city.

Either alone, or in combination with greenbelts, many cities would benefit by the establishment of green wedges that would be gradually driven in farther and farther toward the heart of the city by acquiring land at their points. Such wedges not only would provide breathing space and recreational areas, but would serve as corridors leading out to the open country and as barriers between different parts of the city.

By appropriate use of tax-deeded subdivisions and by rigid requirements in future subdivision developments, effective beginnings can be made towards securing these green spaces at slight cost to the community. If each subdivider is required to set aside a certain percentage of his land for public uses such as streets, school buildings, recreational areas, greenbelts, and so forth, before he can receive approval of his plat, these new developments will no longer become trouble spots for the future city planner.

Recommendations of the Federal Housing Administration

In case American cities should consider it desirable to adopt a policy of establishing public land reserves, the Federal Housing Administration suggests (in a memorandum prepared for this report) that the following advantages might be expected to follow:

(a) Retardation of the blighting process, which undermines existing property values.

(b) Facilitation of long-range planning of subdivisions through greater certainity in development of periphery areas.

(c) Avoidance of ragged or spotty expansion of settled areas through orderly resale or leasing of periphery reserve lands for specified purposes in accordance with over-all community development plans.

(d) Definite provision for greenbelt areas and parkways in place of the present withholding of lands for speculative purposes, and later nondescript development by disappointed holders in intermediate fringe areas.

(e) Correlation of residential property areas with over-all environment; recognition of the economic and social background, including preplanning of business sites so as to avoid threat of damage to residential property values.

(f) Greater economy and efficiency in land use both for public and private purposes. Possibility of using lands for public purpose by withdrawal from periphery land reserves in place of the present expensive repurchasing procedure with its consequent tax burdens.

(g) Possibilities for control of land-speculation cycles through the controlled resale or leasing of the public lands for building purposes in competition with privately-owned sites. Possible application of "yardstick" principle.

(h) Facilitation of accurate appraising because of the greater certainty of environmental influences as related to residential properties.

(i) Facilitation of the planning of streets, highways, transportation, facilities, utilities, and other improvements in urban communities.

"Certain disadvantages," says the FHA memorandum, "must also be considered in any program of public land acquisition, such as organized opposition by vested interests, political frictions, possibility of graft and malfeasance in office, valuation problems connected with such acquisitions, and the difficulty of reconciling the need for definiteness with the need for flexibility in comprehensive city planning such as would be contemplated in a long-term program. It would be better, in any city, to anticipate these objections than to ignore them and run the risk of being charged with superficiality in analyzing the effects of the proposal."

CHAPTER IV

THE PLACE OF LAND ACQUISITION IN A PROGRAM OF URBAN LAND USE CONTROL

Suppose that in the pioneer days of America some far-sighted settler with a few hundred francs or pounds had purchased the entire area of what is now one of our populous and prosperous cities - let's call it Yourtown. Then suppose that his only child, a daughter, had married an impecunious French count or English earl, and had taken the title deeds to Europe; and that she and her descendants had never parted with the land, but had permitted its development on a lease-hold basis. Under these conditions, if the hundred thousand or the million people now living in Yourtown were charged the full economic rent of the land, they would be paying to the heirs of this lucky pioneer an annual tribute which might be fully as great as the entire real estate tax on both land and improvements now levied by the municipality. Is there any doubt that, under those circumstances, the tax laws affecting Yourtown would be so changed as to raise the municipal revenues solely from the ground rents that would otherwise be syphoned off into the coffers of persons who did nothing to create the values and may never have even laid eyes on the property? Why, it would be asked, should an absentee owner be allowed to extract each year a tremendous unearned income, while the persons producing that income are not only compelled to pay ground rents to him, but to pay taxes to their local governments on every structure they erect on the land?

Suppose, on the other hand, that our hypothetical pioneer had been endowed with a high degree of wisdom and public spirit, and willed the

entire land not into private ownership but to the city government, to be held in trust for its future citizens for all time. Under these conditions Yourtown would have ample revenues from publicly-owned ground rents to pay all its municipal expenditures - and perhaps enough to pay its share of county and state levies too, thus making it virtually a tax-free city.

These suppositions point a moral, even if the alternative tales they adorn are both highly improbable. Human nature does not always seem to work in the public interest, but the laws of economics, if properly applied, would do so. There is something inevitable about ground rents of all land above the level of marginal use: to the extent that government does not collect such income, the landowner will, whether he does anything to earn it or not.

If, for the entire area of any city, the choice were between ownership by one individual and ownership by the local government, there can be no doubt as to which the citizens would find the more advantageous. But the case is not as simple as that. Under our present system of land tenure, nearly half of the families in American cities, on the average (42.8 percent according to the 1930 census), own their own homes. Under these conditions, would a shift to complete public ownership of the land (but not of the buildings) be desirable? There are strong arguments on both sides of this question.

Merits and Demerits of Public Ownership of Urban Land

1. The case for private ownership of urban land may be summarized as follows from the arguments of the extreme opponents of public ownership:

(a) Without the protection of land ownership and the lure of possible increment in land values, the major inducement for home ownership and real estate development would not exist. Such material progress as the centuries have seen throughout the world has had private property in land as its inevitable concomitant. Social sanction for individual titles to much of the earth's surface has resulted from its association with the rise and maintenance of civilization.

(b) Under public ownership curruption and red tape would enter into the handling of land. And when strict rules are laid down, as they must always be in government administration, handicaps to efficient or economical land uses result. In hard times a government cannot disrupt its organization by being lenient to needy tenants, whereas a private owner can. Over and over again it has been proved that private administration is superior to public, and land above all should be kept from such, the fate of governmental regimentation.

2. The case for, public ownership of urban land rests on the following facts and assumptions:

(a) Land existed before man existed. He did nothing to create it and can have no inherent right to ownership of more than his fair share of it. Land is the common heritage of society, and every human being has an equal natural right to it.

(b) Under public ownership, government can recover for the public benefit the values that its expenditures and activities create, much more readily than under private ownership.

(c) If any city had owned, and retained from its conception, title to its entire site, that city would have been planned more scientifically, developed more rationally, and be less burdened with taxes than the ordinary city of today.

(d) Ownership of both site and building is not essential to the development of land for business and residential purposes. Witness the extensive use of the leasehold system in many cities, the rents accruing, however, to private owners. Why should not all community-created ground-rents and land-value increments accrue to the communities that create them?

(e) Our present system of land tenure encourages the use in many cases of the less desirable land in a city, or of land outside the city's limits, while much desirable land within the city is held vacant or poorly improved for possible speculative gain. Much of such land could be put to use in the public interest. Unemployed land, like unemployed men, is an economic and social drag on the community.

Is Land A Public Utility?

The possibility of more adequate control of land uses, by establishing land as a public utility, as suggested by Thomas Adams, and others, is discussed by Helen Corbin Monchow in "Seventy Years of Real Estate Subdividing in the Region of Chicago" (Northwestern University, 1939). To quote in part:

"Since the Wolff Packing Company case in 1923 (262 U. S. 522), public utility industries have been placed in three categories: Those which rest upon public grant or franchise; those which through custom and usage have long been regarded as public callings; and those which 'have come to hold such a peculiar relation to the public that this (some government regulation) is superimposed upon them.' With the first two of these categories we are not concerned. Within the third have appeared the recent additions to the list of public utility industries.

"How and to what extent must public interest in a given industry arise in order that it be declared a public utility? Is land thus 'affected with a public interest?'

"One test applied to determine the public utility status of a given industry is whether the commodity or service involved is essential; whether the public is 'peculiarly dependent' upon it. Surely this test would present no obstacle to inclusion of land in the public utility category. The basic importance of land requires no exposition. But examination of a list of essentials of life (food, water, shelter, fuel, clothing) shows that the terms 'public utility' and 'necessities of life' are not synonymous. Something other than its 'essential' character is necessary to establish land as a public utility.

"Another test lies in the query whether government would feel it a duty to furnish the commodity or service if private enterprise did not do so. The answer would seem to be in the affirmative. The supplying of sites to house its people would seem to be an essential responsibility of government if sites were not furnished by other agencies. But this test alone seems insufficient to bring land within the public utility category.

"Another aspect of public interest concerns the market conditions for a given product. Is the market monopolized or does relatively free competition obtain; i.e., is market information available, do buyers and sellers have ready access to the market, etc.? The test used to determine whether monopoly or competition prevails has been the price of the product.

"In this connection two statements may be made with respect to provision of urban residential sites. (1) Subdividing can hardly be said to be a natural monopoly. Although all land has some monopoly characteristics -- such as the fact that no two sites are exactly the same -- nevertheless, as far as residential lots are concerned, there is enough similarity among them to prevent monopoly conditions. (2) For this reason, price has not been a major concern in connection with sales of urban residential lots. The relations between seller and buyer which determine price have not been a major issue. Lack of information and inadequate organization do customarily characterize the land market, but these conditions have not been regarded as important obstacles to determination of competitive price for residential sites, nor have they as yet been considered sufficient basis for establishing the public utility status of a given industry.

"Public interest in subdivision lots attaches not so much to their price as to their use. The mere fact of the division of land into lots has far more public significance than their price. Public concern goes beyond the transaction of sale to the use of land. In this respect, then, 'public interest' as applied to utilities has a broader meaning when applied to land. The implications growing out of the sale transform a 'public' into a 'social' interest. The fact that society must bear the consequences of unwise utilization thus causes land to be 'affected with a social interest' at least.

"This characterization of public interest in land would seem to place land subdividing in a sort of 'twilight zone' between a clearcut public utility and an out-and-out private business -- with the trend apparently toward constantly closer identification of land with public utilities...."

Citing a law of the state of Washington (Sess. L. 1937, c. 186) under which subdivision control through the public utility channel is being tried out, Miss Monchow predicts that this experiment will not go unchallenged, and adds:

"Perhaps recognition of the public utility nature of land may have to wait upon clearer formulation of the implications and objectives of the control program, for it has been said that society has grounds for interfering in business only when 'it sees its interests clearly and can devise appropriate and effective means to safeguard and promote them.'

Nevertheless, enough evidence would seem to have been presented in the course of this study to throw grave doubt upon whether unsupervised subdividers can be trusted to direct our urban expansion. For this danger, public utility status furnishes an effective remedy -- namely, control over entrance into the business. It is supplemented by the public utility philosophy which leaves a business in private hands -- under government regulation -- upon good behavior.

"The other present major obstacle to use of the public utility concept for subdivision control is the absence of an adequate measure of what constitutes convenience and necessity. Until we know: (1) more about the present supply of vacant lots, i.e., (a) their location; (b) whether they are improved with utilities; (c) what access they have to community facilities; (d) whether their size is adequate; (e) their tax status; (2) whether replatting is necessary to achieve 'community development' or promote more balanced utilization; (3) whether zoning regulations need revision; (4) more about population movements and the financial status of potential buyers -- until we know facts such as these we are not in a position to say whether a proposed subdivision will serve the public convenience and necessity. Precise information on these and other points is a necessary basis for this type of regulation.

"Progress is being made toward the accumulation of such data -- through real property inventories as well as through case studies such as those cited in Chapter I -- and this obstacle need not long be a deterrent if public utility status seems necessary for control of the subdividing business."

Criteria for the Use of Land Acquisition As A Land-Use Control

If municipal administration and city planning and urban land economics were exact sciences, it might be possible to devise a set of criteria by which a city's policy as to land acquisition could most certainly promote the public welfare. It is the human factor in the problem of land uses that is the main obstacle to formulating definite standards for determining whether as a general rule, or in any given case, public ownership is preferable to other possible methods of land-use control.

Since the charting of absolute criteria is impossible, the present attempt will be merely to pose a series of questions that ought to be

explored as intelligently as possible by all responsible for determining, or able to influence, the land policies of any city:

1. As to a broad general policy, what effect would increased public ownership of land have upon -

(a) land values and land prices in the neighborhood or the city as a whole?

(b) the tax revenues of the municipality?

(c) new private construction?

(d) public or private plans for the rebuilding of blighted areas?

2. Would the gradual accumulation of municipal land reserves by a city be a stimulus to more intelligent city planning and zoning, and to increased concern by the voters for the election and appointment of high-grade officials to public office?

3. As to any specific parcel of land coming into public ownership, would the land be useful for any public or quasi-public purpose (such as listed on p. _____ of this report)? Or could the parcel be exchanged for one of value to the city?

4. Is the price offered by a prospective buyer of city-owned property advantageous to the city, or would temporary retention in public ownership be preferable? In the latter case, could the property be leased for private use on a short-term or long-term basis? If sold, ought the city to impose any deed restrictions as to use of the property?

5. As to any policy that the municipal government may wish to pursue, is there any reasonable doubt as to its legality? If so, can that doubt be removed by a test case in the courts, or state legislation or charter amendment?

6. Can public spirited persons of means be persuaded to aid in a well-considered program of land acquisition by donating land to the city? In many cities valuable sites for parks, playgrounds, community buildings, libraries and other public purposes have been given or bequeathed by citizens.

Coordinating Ownership with Other Controls

However opinions may differ as to the merits and demerits of public ownership of urban land, it seems a safe prediction that no existing American city will, during the present decade, come into 100 per cent ownership of its site. In practically every municipality, however, the percentage of land publicly owned may be expected to increase as the years go by. That municipal governments may encourage this trend and derive maximum benefit from it, the most effective possible coordination of public ownership with other land-use controls must be worked out.

To this end certain powers now possessed by some cities ought to be made legal for all, and, where existing, ought to be exercised much more generally than at present. Two examples:

1. The power of excess condemnation is often thought of as a device for recapturing for the public treasury the added values given to adjoining private land by public improvements. While important in this respect, the exercise of excess condemnation may be of greater public value by enabling the municipality,

when reselling the land bordering a public project, to control its use by protective covenants running with the land. In such covenants, of course, a much greater degree of architectural and other control can be achieved than is legally possible through zoning.

2. Modern types of subdivision control give broad powers to city planning commissions to influence site plans, to establish set-back lines on all streets, and to provide for donation by the subdivider of recreation areas to the city.

It seems probable that the next year or two will see the enactment in one or more states of legislation authorizing close cooperation between municipal governments and privately-owned development corporations in the condemnation, replanning and rebuilding of substandard urban areas. Here, through the city's power to impose conditions precedent to the exercise of eminent domain and the granting of partial tax-exemption, effective control of land uses will be possible and practicable.

CHAPTER V

ACQUISITION TECHNIQUES

This chapter is an attempt to assay the several land acquisition techniques that may be available to public bodies in the United States.

First, it should be understood that this chapter, like the rest of the report, does not limit itself to what is now legally possible in every jurisdiction. The whole report contemplates changes in law and practice to conform to changes in the nature and intensity of our urban land use problems, and therefore deals with the potentialities of land acquisition techniques under broader interpretations of public power and public purpose. Second, although the report is concerned with the public acquisition of urban land, this chapter does not limit itself to those techniques available to urban governments. It contemplates the role of land acquisition in a national land policy - a land policy in which both Federal and State governments will cooperate with local government. The fact that there is now no "national land policy" with regard to urban land does not deter the Committee from considering land acquisition methods and machinery which may be used in some ~~utopian~~ era when such a policy does exist. Third, this is not intended to be a manual of land acquisition practice, nor a casebook in land acquisition law. This chapter is an attempt to digest the experience of the technicians in the field, and make it available to laymen. Fourth, more

space has been devoted to new and emerging methods of land acquisition than their potentialities might justify, since the purpose of the report is to call to the attention of city officials the wide range of possibilities that exist in acquisition techniques. Fifth, special emphasis has been put on land assembly rather than on the acquisition of individual parcels. The concern of the Committee has been to assess the possibilities of large scale land acquisition for such purposes as public housing, highways, recreational areas, and land reserves, where the cost of the land is likely to determine not only the cost of the project, but even whether it shall be undertaken at all.

1. PURCHASE

Open market purchase is the most widely used and the most straightforward land acquisition technique available to the government. Because it is used largely in public acquisition and exclusively in private acquisition, there has been built up a larger body of knowledge about appraisal, negotiation, assemblage, values, and prices under open market purchasing than under any other technique.

Purchase differs from most other techniques of land acquisition in that in theory it represents an agreement between property owner and government as to the value of the property. The owner is not compelled to sell, and the government is not compelled to buy (unless it is forbidden to resort to condemnation). Land may be purchased with greater ease and dispatch than it may be condemned, for example, or acquired by tax foreclosure. On the other hand, since an owner may break off negotiations at any time, it is necessary to handle each step of the acquisition process with great delicacy.

A careful and dependable appraisal is of primary importance in the purchase of real estate, and especially in land assembly projects. The appraisers should be experienced, and familiar with the local conditions. It is preferable too that the men selected should have had some experience as witnesses in litigation where the value of real estate was a matter of controversy. Some Federal agencies employ experienced appraisers to review the values reported by local brokers, and to adjust such values when necessary. These agencies have found by experience that the valuation finally established should aim at fair normal market value, the price that a willing seller might expect to obtain from a willing buyer. It must, however, be borne in mind that in the assembly of large tracts owners are frequently unwilling to dispose of their properties, especially where the owner himself is utilizing the property as a home or business site. In these cases, the proper maximum price is the award that might reasonably be expected in a condemnation proceeding plus the cost of the proceeding. This price may vary in different states; in some states, for example the public corporation or agency instituting condemnation proceedings is required to pay the fee of the defendant's attorney. In these states, it is altogether possible that the expense of condemnation will equal or exceed the value of the property involved.

Upon completion of the appraisals, it is good practice to set negotiating prices, based upon the appraisals and modified by the character of ownership and the circumstances under which the present owner

acquired the property. Experience indicates that it is advantageous to negotiate first with those owners who have acquired properties by foreclosure, such as banks, building and loan companies, the Home Owners' Loan Corporation, insurance companies, etc. These properties are generally for sale at stipulated prices and the owners are frequently eager to accept any offer that will permit them to get out the sum they have invested, which may be less than the normal market value. Properties owned by the estates of deceased persons, a group of heirs, or absentees are also generally acquired with little difficulty. An owner who resides in another city and is required to retain the services of a rent collector and manager for investment property is frequently anxious to dispose of the property and reinvest the proceeds of the sale where he may give his investment his personal attention. This is especially true in the case of low rental properties where the rents are collected weekly, and where collection costs typically run as high as 10% of the rentals.

In the above manner then, a considerable number of the properties to be assembled may be acquired at present market value rather than normal market value, and there remain those properties held by owners who have no desire to sell. These may be divided into two classes, investment properties and owner occupied properties. For the investment properties appraisals should be made and negotiations carried on on the basis of value as a prudent investment at normal rentals. The owner occupant is,

as a rule, most difficult. In addition to the actual cash he has put into the property, there are generally trees, shrubs, hedges, and other planting to which he attributes value. He may have so arranged his home as to provide amenities which he personally desires and values. Appraisers must be prepared to make allowance for those details, details which would influence the award of a condemnation jury. The negotiating price should be based on the amount necessary to compensate this type of owner for the property, his inconvenience in leaving it, and his expense in acquiring a comparable home elsewhere.

It has been the experience of the United States Housing Authority that the best results are obtained by open market purchase under the supervision of a staff employee, experienced in mass buying. As of May 1, 1940 the USHA had assisted in the acquisition of 167 housing sites, comprising 6,459 individually owned properties. Of this number, 90.7% or 5,860 parcels have been acquired by open market purchase. The remaining 599 parcels were acquired by condemnation. The cost of 5,659 parcels on improved sites, acquired by open market purchase, averaged $0.274 per square foot. The cost of 554 parcels on improved sites, acquired by condemnation averaged $0.513 per square foot. The cost of 201 vacant parcels, acquired by open market purchase, averaged $0.042 per square foot and the cost of 45 vacant parcels, acquired by condemnation, averaged $0.057 per square foot. The improved properties acquired by open market

purchase were obtained at a total price 7% below the local appraisal value while the awards for improved parcels, acquired by condemnation, exceeded these appraisals by 12.5%. Vacant parcels were acquired at prices exceeding the local appraisals by 7% while the condemnation awards for vacant parcels exceeded these appraisals by 11.4%.

Under proper supervision, land assembly projects may be carried out without excessive costs, unfavorable publicity, expensive delay, or unnecessary litigation. Land assembly projects, however, differ markedly from the usual run of individual real estate transactions, and for that reason brokers and realtors not experienced in mass buying are likely to make several types of error -- perfectly natural and justifiable errors, but errors that can be avoided by an experienced supervisor. First, appraisers and negotiators will think in terms of a buyer's market, which has obtained since 1929. When the government goes into land assembly, however, the market automatically becomes a seller's market - the government must have the land or abandon the project, and the only limit to the price is the probable amount of a condemnation award. Second, they will think in terms of a truly free market, where the buyer's hand is not exposed, and where he can substitute one property for another. To the government agency, however, one property is not as good as another - it must acquire the entire project area, and no other; and since the project is almost invariably a matter of public knowledge, everybody knows what the

government must buy. Third, brokers and realtors accustomed to ordinary transactions will think in terms of a willing buyer and a willing seller, whereas in land assembly neither party is quite free. The government must acquire the land, but it can resort to condemnation if purchase price seems too high; the owner need not sell, but he cannot resist the power of eminent domain if it is exercised. When land must be bought in mass, in short, different conditions govern price, and the additional cost (called plottage or assemblage) must be reckoned in planning a land assembly project. If the best practices are followed, however, the element of assemblage may be kept to a minimum.

As a technique of acquisition, purchase alone would be prohibitively expensive; but backed by the power of eminent domain, open market purchase is an effective and relatively inexpensive method of acquisition (as the data on the USHA program reveals) even when condemnation is used sparingly. The Committee hopes that agencies with experience in land purchase (such as the USHA, Public Buildings Administration, local housing authorities, State highway departments, etc.) should make their experience known to other agencies, with a view to improving practice throughout the United States. If every agency purchasing land can match the achievements of the best, the Committee feels that purchase can and will be the principal technique for acquisition of improved properties.

2. EMINENT DOMAIN

The power of eminent domain, like the power to tax, is an inherent attribute of sovereignty: the power to command, for the purposes of the commonwealth, the resources of all who live under its protection. In the United States, eminent domain is limited by the constitutional prohibition "nor shall private property be taken for public use without just compensation." This has been construed to mean that private property may be taken only for a public purpose,* and that final determination of "just compensation" must be made by judicial process in some form.

Since the power of eminent domain is exercised by forty-nine sovereign governments in the United States, subject to restrictions by forty-nine constitutions and interpretations by forty-nine courts, it is patent that there is no uniform method of condemning land for public purposes. Even within a single state there may be different condemnation procedures prescribed for such bodies as municipalities, public utilities, railroads, special authorities, and the state itself. It is, however, possible to divide condemnation procedures into two broad classes, judicial and administrative:

(1) The most common method is a straight judicial proceeding, in which the condemning agency (usually by petition) institutes an action for condemnation of the property described in the petition against the parties defendant (the owner and other persons having an interest in the property). After a determination as to the publicness of the purpose, and whether the

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* See the discussion of public purpose in Chapter II, page_____.

taking is necessary to that purpose, the court makes a finding as to the value of the property. The condemning body then has the option of paying the award and taking the property, or (if it feels that the award is too high) of dismissing the whole proceeding.

In condemnations by the Federal government and several states, there is provision for filing a "declaration of taking", an action concurrent with and supplementary to the judicial proceeding described above. At any time after a judicial proceeding has been instituted, the condemning agency may file its declaration of taking (usually accompanied by the depositing of a sum of money sufficient to cover the estimated award) and take immediate title to and possession of the property in question. Meanwhile the judicial proceeding goes on as usual, and an award is made. At this point, however, the condemning agency no longer has the option of dismissing the proceedings; since it already has taken title to the property, it must pay the award. In some jurisdictions bonds or other satisfactory security may be deposited in court with the same effect as filing a declaration of taking.

Another variant of this method is that upon depositing security the condemning agency may take possession of, but not title to, the property being condemned. Then, when the award is made by the court, the condemning agency has the option of paying the award and taking title, or of dismissing the whole proceeding and paying the property owner interest on the value of the property and damages for the inconvenience caused him. However, whether the condemning agency takes title to the property, or possession of it, or waits until the final award is made, the characteristic of this class of condemnation is that it rests on initial judicial action by the condemning agency.

(2) In the second class of condemnation, the initial action is by an administrative agency. While the procedures vary it may be generally stated that the condemning agency may, through action of its governing body (such as a city council), pass a resolution to the effect that it intends to condemn certain lands and then publish such resolution, the publication being considered sufficient notice to the property owners. Thereafter hearings are had before some body, usually commissioners appointed for that purpose, which determines the value of the property to be condemned. Title is then taken by the condemning body, and the amount of the administrative award is payable to the property owner if he wishes to accept it. In most cases of this type the property owner has a right to appeal from the award made by the commissioners, whereupon the case is tried de novo in court. Under this type of procedure the condemning agency may usually dismiss the proceedings before taking title if the award of the commissioners appears to be too high. Once it has taken title, however, it is obligated to pay the amount of the judicial award.

A variation of this method exists in Massachusetts where the condemning agency may file a declaration of taking without instituting any court proceeding, whereupon title vests in the condemning agency. The land owner then brings an action as plaintiff to recover the value of his property, which the condemning agency must pay.

Within the framework of these general classes of procedure, of course, there are many variations. In filing the original petition against the

property to be condemned, the government may name a single parcel, part of a parcel, or a block of parcels. It may name all or part of the known owners, or it may proceed against the land without mentioning the owners. In determining the amount of the award, the court may sit with a regular petit jury of twelve good men and true, there may be a special group of commissioners, or the judge may sit by himself. There are questions as to the admissibility of certain kinds of evidence. "Public purpose" may be broadly or narrowly construed. Even within any one jurisdiction, it is not likely that only one type of condemnation procedure will obtain. Municipalities, public utilities, railroads, housing authorities, conservancy districts, port authorities, and other public or quasi-public agencies, having different problems and different objectives in land acquisition, will usually have different condemnation procedures.

Each of the methods of condemnation has its advantages and disadvantages. The principal objection to the straight judicial proceeding is the time it takes -- sometimes as long as two or three years -- while its advantage is that at any time the government can step back and dismiss the suit if the awards are too high. The Declaration of Taking procedure permits immediate taking, but obligates the government to pay whatever the courts award, however unreasonable. The method of filing security, which permits the government to take tentative possession until the award is made, is something of a compromise; but it obligates the government to pay damages if the suit is dismissed, and leaves it the target of bitter feelings. The second broad class of condemnation -- so-called administrative

action -- has the same drawbacks as the Declaration of Taking method, and in addition puts the burden of proof on the citizen, which may be considered either an advantage or a disadvantage.

The Place of Condemnation on a Land Acquisition Program

Condemnation is generally thought of as a "last resort" method of acquiring land, a final compulsory expedient to acquire title to the property of a recalcitrant owner. Actually it is more than this: it is a governor on the open market prices that will be asked of government, for the owner who asks too high a purchase price knows he may be the defendant in a condemnation suit. By itself, condemnation is a clumsy instrument of land acquisition. Except in the acquisition of individual parcels of high value, the legal costs and the solicitude of the courts for private owners make it an expensive technique. Logically, in land assembly projects, condemnation and open market purchase should go hand in hand as twin tools of public acquisition: first, straight purchase from the owners, with the threat of condemnation keeping the prices at reasonable levels; second, condemnation against the remaining parcels. The Housing Division of the Public Works Administration, conducting one of the largest land assembly projects ever attempted in this country, relied entirely on the joint use of purchase and condemnation until a Federal Court ruled that it did not possess the power of eminent domain for housing purposes. The experience of the USHA indicates that for the most part it has not been necessary to acquire more than 10% of the parcels by condemnation.

One specific advantage of condemnation is that it automatically clears title to the land in question. In many cases, friendly condemnations, or "quiet title" actions, are brought against property of doubtful title. This device was successfully used by the Housing Division of Public Works Administration before the establishment of USHA. In such cases, options to properties within the project area were acquired in the open market until serious resistance was met. At that point, the PWA brought blanket condemnation proceedings against the entire project area, including those properties already optioned. Then the cases involving optioned properties were settled out of court, or the options were introduced as evidence of the value of the property, while the rest of the properties were condemned in the usual way. This gave the government the benefits of both open market purchase and condemnation, and cleared title to all doubtful properties at the same time.

There are variations to this so-called zone condemnation, where land is condemned, not parcel by parcel, but in areas. The now famous Kingsway project in London, which called for the construction of a new highway through one of London's most congested slums districts, involved condemnation of a zone of land several blocks wide and several miles long.

A related problem is that of excess condemnation, prevalent in Europe but constitutional in only nine states of the United States. Excess condemnation is the taking of more land than is actually needed for the primary purpose of the condemnation. Now, in many cases it costs no more, or little more, to acquire this extra land. In the case of a highway, for example, the right of way may easily ruin a man's

lot completely, leaving him two odd parcels. The award of the court would reimburse him for the full value of the lot, yet the government could not condemn the whole lot because the two odd corners are not essential to the construction of the road. The power of excess condemnation would allow public bodies to obtain not only such fragments, but also abutting parcels; to pool them into an economic pattern; and sell or lease them to private persons. With the broader concepts of public purpose now emerging, and with the more careful statements of public objectives written into our laws, excess condemnation is less a burning issue than it was twenty years ago, but it has its uses; and where the authority exists, urban land planners should make use of it.

Changes in Law and Procedure

Condemnation, like many other judicial procedures, has very serious drawbacks. In an attempt to protect the private citizen, the law-makers and precedent-makers have at times lost sight of the fact that the public interest too needs protection. At present, for example, in some jurisdictions, every person having an interest in the property must be notified by service of the condemnation; and if any such person is missed, the proceeding as to his parcel is invalid. In zone or blanket condemnations, each property owner is entitled to a separate trial, usually by jury, so that it may take years before the books of a land assembly project can be closed. If commissioners or special referees are appointed to set valuations, property owners can almost invariably appeal and obtain a trial de novo before a jury, after which he may again appeal until he reaches the highest court in the state. In jurisdictions where

title does not vest until the completion of appeal, this may mean that the government can not get title for a matter of years. In many jurisdictions, again, "expert" testimony as to the value of property need not be explained: the expert can in effect say that he has taken all the factors into consideration and finds that the property is worth twice as much as the previous speaker said it was.

Before it can take its proper place in the government's kit of land acquisition tools, eminent domain procedure needs drastic overhauling. In the first place, it would be desirable to have one standard procedure for each state, under which all agencies having the power of eminent domain could operate. This standard procedure should provide for alternative methods of condemnation permitting immediate possession, immediate taking of title, and the regular judicial method; it should provide that except where title has actually been taken, the government should be able to dismiss the case upon payment of any actually demonstrable damages. There should be a special provision for non-contested and friendly condemnations under which property could be taken by summary procedure. Where possible, all actions should be taken against the land itself, so that forgotten parties at interest cannot upset the apple-cart later; and where this is not possible, it might be advisable to set up a state "insurance" fund to pay off such parties rather than let them obtain title to the land again. Appraisal procedure should be standardized and brought down to earth; assessed valuation of the property should be admissible in evidence as an official determination of value, and not as merely the personal opinion of the assessor; valuations accepted by the courts should

have more relationship to reality. Finally, the amount of time should be cut to the bare minimum consistent with the protection of the private citizen, possibly by the establishment of special commissioners to hear evidence, and from whose decision appeal would lie only on matters of law, not fact.

3. TAX TITLE ACQUISITION

It is probably safe to say that nowhere in the United States does there exist data adequate for an evaluation of tax reversion as a land acquisition technique, either present or potential. While there are many partial analyses of real property tax delinquency as a fiscal problem, it has had scant attention in its relation to land use. Attempts to solve the problem of tax delinquency, furthermore, have been directed toward maintaining the stream of municipal revenue rather than toward correcting the basic land use maladjustments which underlie so much delinquency.

The difficulties in acquiring desired land by tax forfeiture arise because the process has been developed not as a method for transferring title, but first as a penalty held over the head of the non-paying owner, and second as a method of selling an interest in land to recapture lost revenue. Legislative leniency and judicial strictures have further weakened the position of the public by excessive favors to the delinquent interests, until in most states tax reversion is now a club which government can hold but cannot swing, instead of being an effective means either of law enforcement or of bringing maladjusted land into public ownership for use or replanning.

The present inadequacy of tax land reversion procedures in most jurisdictions is the result of strong and often irresistible pressure by political and economic groups. Hearth Home, and Mother has been a battle cry; votes have been weapons which prevented tax officials from performing their unpleasant duties; and at times the volume of delinquencies has been so overwhelming as to make foreclosure administratively impossible. Local units of government have attempted to keep property "on the tax rolls", since they depend upon the general property tax for 75 to 90% of their revenues.

The Committee is of the opinion that the philosophy underlying most of our tax reversion laws has been unrealistic. Those laws have been based on the unstated assumption that all delinquent property owners could pay if they would; then during the depression, the laws were reversed on the assumption that none of them could pay, and that any foreclosure robbed a man of his property for a fraction of its value. The conviction that the homeowner should not be deprived of his property has been applied to vacant and unused property.

As a matter of fact, analyses of both rural and urban tax delinquency reveal that there are three principal classes of delinquent property. First, there is property temporarily distressed. Owners of this type of property stop paying taxes because they have no money, because they find a loophole in the law, or because the penalties are light. The property itself is healthy enough under normal conditions: delinquency is a depression phenomenon. Here the philosophy underlying our tax laws is

applicable. In most cases the threat of foreclosure (tempered by leniency during depressions) will be adequate to enforce payment. Second, there is vacant property both within the city and in the rural-urban fringe. Harland Bartholomew's study of 16 typical American cities shows that 40% of the areas of these cities was vacant and unused property. Unless the owner uses the land for billboards or traditional "tax payers" he pays the taxes on the land out of other income with the hope of recouping his "carrying charges" when he sells the property. In times of depression, however, he may refuse to continue to pay taxes. In the rural-urban fringe vacant property is usually land which has been taken out of agricultural use (where it was producing an income) and converted into residential lots awaiting the "higher use". While it is waiting, the owner is in the same situation as the proprietor of vacant land described above. If more lots are laid out than can be sold the exactions of bondholder and tax collector soon overshadow the hope of profitable sale. Local governments thus find large blocks of delinquent land on their hands. The best disposition of such property from the standpoint of owner and public alike is public ownership followed by sale or transfer to a more logical private or public use. Against this type of tax delinquency the threat of foreclosure is often an idle gesture, for the owner may have no other resources, and the property itself cannot earn enough to meet the tax bill. Third, there is tax abandoned property. This property may belong to some nominal owner, some person whose name is listed in

the county courthouse or on the tax rolls, but in effect it belongs to no one: it has been abandoned to the wind, the rain, and the rats, its taxes unpaid, its mortgage delinquent. Here no threat of foreclosure can produce tax revenue. The only solution for the delinquency of such property as this -- vacant subdivisions, condemned slum dwellings, abandoned factories -- is acquisition of title by the public. It is against this third type of delinquent land that existing procedures are least effective. The cost of foreclosure frequently exceeds the sale value of the property; the procedure is complicated and tedious; and the end product may be a title worth almost nothing.

Before any frontal attack can be made on tax delinquency, the Committee is of the opinion that there must be changes in law and practice which will allow public agencies (after giving the owner every reasonable chance) to foreclose delinquent properties quickly and inexpensively, and obtain a salable title.

Current Efforts in Tax Title Acquisition

Under a reformed law permitting expeditious acquisition of tax abandoned land, the most logical area of operations would be the large tracts of vacant land surrounding most of our cities today. This land has almost no immediate value; its acquisition would result in no personal hardship; and while the city does not yet own this land, it has in a sense paid for it by the loss of tax revenues. The utility of this land has already been pointed out in the chapter on Objectives: acreage may be reserved for future development, or put into greenbelt

uses; unimproved parcels may be replatted or pooled and used for parks, school sites, or held in reserve for future needs; improved parcels (i.e. with streets, sewers, or other utilities installed) may be acquired for resale or, preferably, lease to private owners who wish to build.

Despite the handicaps of cumbersome laws and expensive procedures, several cities and towns are currently making heartening attempts to foreclose tax abandoned properties and put them to some use. In Syracuse, New York, for example, the Syracuse Housing Authority wished to acquire some blighted downtown properties. With the cooperation of the City of Syracuse, it obtained a number of tax reverted properties in the outskirts of the city, which had some prospect of increase in value, and it exchanged these for the hopeless downtown properties held by the banks of Syracuse. Polk County, Iowa, (in which Des Moines is located) has not only moved to acquire tax delinquent parcels, but has formed a real estate bureau for the orderly marketing of these properties. As of _____, 1940, the county has foreclosed_____parcels, and had sold_____, realizing $_____. The Federal Housing Administration reports that much of the excess subdivided land in the southwest section of Chicago is being acquired by tax reversion, and sold to developers on a "bank night" basis: if the developer buys a lot and builds a house on it, he gets a second lot free. Monroe County, New York (in which Rochester is located) has brought into public ownership large areas of vacant land already supplied with utilities. This land is open to development in small chunks, after zoning the area to make

for homogeneous neighborhoods. Sale prices are very low, but the speculator is kept out by a provision that deed to the land is not passed to the buyer until a house is 80% completed. Other examples could be cited: Boston; Milwaukee; Harrison and Yonkers, New York; Portland, Oregon; Minneapolis. The point to be made is that even under existing law, local initiative can often find a partial solution to the tax delinquency problem. It should also be kept in mind, however, that the solutions are only partial: there is no market for all the foreclosable urban land in the United States, and until the law provides a summary method of acquisition cheap enough to turn this no man's land into a public reserve, we have not faced the whole problem.

Possibilities of Land Acquisition by Tax Title.

In considering the possibilities of land acquisition by tax title, it should be stated again that the primary purpose of tax laws is to raise revenue, and that acquisition of land is a secondary objective. The need, therefore, in reforming tax laws is to provide a quick and inexpensive method of acquiring land from which there is no further hope of revenue. The difference between the three major types of delinquent property should be kept in mind, and any proposed law should distinguish in its actual operation between income properties and vacant or abandoned properties. Real estate tax enforcement procedure may then become significant as the instrument whereby property may be separated into two classes; that which is in a healthy condition, which should stay in private ownership, and against which tax laws should operate as a means of enforcing tax payments; and that which, because of continuing delinquency, presents a public problem, which is eligible for public ownership, and against which tax laws should serve as a means of transferring title.

Existing procedures may be divided roughly into two classes, both of which may involve public ownership at some point:

(1) Under one type of enforcement, an interest in the property is offered to the general public in return for the delinquent taxes. The procedure might run somewhat as follows: when the taxes fall due and are unpaid, the delinquent owner is notified that he is delinquent. After a specified period, his property is subject to tax sale, unless the arrears are paid up. At the tax sale, the property, or an interest in it, is offered to the public at auction or outcry. In some cases a lien or tax certificate is offered to the highest bidder; in others tax title passes to the bidder who will put up all the taxes for the least share of the property (2/3, or 1/2, etc.). If there is no bidder, the state may take title, or it may be forced to wait an additional period before doing so. After the tax sale, there is a redemption period, during which the owner, upon payment of arrears, interest, and penalties, may redeem title to his land. When this period has expired, the property becomes eligible for tax deed, and it passes to the holder of the lien or tax certificate -- the bidder at the tax sale, or the government. By the time title has finally passed from the original owner, three to five years may have elapsed; and unless the final transfer has been made by judicial process, the title itself is of doubtful validity.

(2) Under the second type of procedure, there is no offering of tax title or tax lien or tax certificate (or whatever the instrument is called) at public sale. After a specified period of delinquency, tax title passes to the taxing authority. This is followed by a redemption

period, during which arrears, interest, and penalties may be paid and title restored; but if the property is not redeemed, final action is taken to vest title in the government, usually by judicial action.

There are several defects in the prevailing tax enforcement procedures. First, the revenue-raising and penalty provisions overlap and mix with each other. Second, the enforcement procedure is retarded by indulgent provisions in favor of the non-taxpayer. Instead of first allowing the owner every opportunity to pay his taxes and then moving to foreclose his property, our laws now force a transfer of title before the owner has had his last chance to pay up, and, consequently, allow him to break up the enforcement (or foreclosure) procedure by paying up. The first step in enforcement, furthermore, is a step designed to recapture the lost revenue, not from the owner of the property from which it is due, but from a third party who until that time has had no interest or part in the relations between the citizen and his government. In the case of vacant and abandoned properties this simply forces government to offer to the public lands that should remain in government ownership, with the result either that there are no bidders, or that the property is bid in by speculators and is back on the delinquent list in a year or two.

The third drawback is the virtual impossibility of obtaining valid title by tax reversion. Legislatures and courts have been so solicitous of the rights of property owners that they have forgotten that the public too has rights which must be safeguarded. Without attempting to describe the swarms of technical reasons for which title acquired by tax reversion may be voided by the courts, it is safe to say that in few states can a

public authority obtain a salable title to land. The safeguards which have been built to protect improved properties, occupied by owners or tenants, have been extended to the vacant and abandoned properties to which they have no logical application.

Finally, tax foreclosure, even when it does vest valid title in the public, is too expensive. By the time the government has paid for title search, legal advertising, serving of process or notice on interested parties, court fees, registration fees, and the services of its legal staff, it has usually laid out quite a sum. If a city is acquiring a large hotel in the downtown area, the cost is relatively small; but if a suburban town or county is trying to clean up a dozen subdivisions cut into a thousand lots the cost is clearly prohibitive.

The Committee is of the opinion that there must be drastic revision of the tax laws of most states, both to enforce payment of taxes from land that can pay and to acquire for public use land that cannot pay. The Committee on Law and Legislation of the Central Housing Committee is preparing a model tax collection law, and the Land Committee urges this problem upon the attention of other interested groups. Whether one tax collection law could be written for every state or not, the Land Committee feels that from the land use standpoint every state law should contain provision for a definite period of delinquency, long enough to establish the non-revenue-producing character of the land, followed by swift and final acquisition of title by government. In order to insure acquisition of a valid title, this should be by judicial action, and, where there is no active owner or user, by summary action.

4. MORTGAGE FORECLOSURE

A fourth method of public land acquisition is through the credit machinery of government. The foreclosure of publicly owned mortgages, like tax reversion, is an involuntary rather than a deliberate method of acquiring land: the primary purpose of the foreclosure, that is, is to protect a public investment, and the property comes into public ownership by the back door.

There are four Federal credit agencies which may from time to time be in a position to acquire urban land: the Home Owners' Loan Corporation, the Federal Housing Administration, the Federal Deposit Insurance Corporation, and the Federal Savings and Loan Insurance Corporation. Of the four, the HOLC is the only one that is likely to come into possession of any considerable amount of urban property. The FHA does not actually lend money, but only insures loans made by local credit institutions. Because of the rigid requirements for insurance, and because it has insured mortgages in newly developing and carefully controlled areas, FHA has had a very low foreclosure rate: of the 520,000 insured mortgages only 2,095 (or 4/10 of 1%) have been foreclosed; and of these only 1,188 have been transferred to FHA in return for payment of the insurance. The Federal Deposit Insurance Corporation and the Federal Savings and Loan Insurance Corporation do not actually own or insure mortgages: they do, however, insure the deposits of some 2,200 savings and loan associations (with 2,350,000 accounts) and 13,600 regular banks (with over 65,000,000 accounts). In case either corporation is called in to make good when a bank fails, it supervises the liquidation of any assets, including

mortgages and real estate. To date the operations of neither corporation have been large enough to make them a considerable factor in public land acquisition. The FDIC has only one large centration of properties on its hands (in the New Jersey sector of the New York Metropolitan Area); and the FSLIC has disposed of insignificant amounts of real estate.

The Home Owner's Loan Corporation, however, has very considerable holdings of urban mortgages. Since its inception it has refinanced over $3,000,000,000 of mortgages secured by approximately 10% of the owner-occupied residences in the United States (excluding farms). A great deal of this was very sour property, and much of it has been foreclosed; and while it is impossible to predict the rate at which these properties will be foreclosed in the future, the HOLC is in the process of liquidation, and eventually will have disposed of all its mortgages. On April 30, 1940 the HOLC actually owned 68,535 properties, of which 28,000 were in New York and New Jersey.

Since all four agencies are concerned with lending money rather than acquiring land, their policies toward foreclosed properties now contemplate disposal to the public with the minimum financial loss to the agency. So far there has been no machinery whereby a public body wishing to acquire land could inspect the properties in the portfolios of these credit agencies, so they have in general been thrown on to the local real estate market through local brokers. The HOLC has gone a little farther than the other agencies in property management, principally because of the volume of liquidations. When HOLC forecloses a property, it appraises it, and decides whether or not to make repairs or renovations before renting or selling it. In Milwaukee, FSLIC has cooperated with the

Wisconsin State Banking Commission and the local banking and real estate men in establishing the Milwaukee Properties Bureau, Inc., which acts as a clearing house in the disposal of residential properties falling into the hands of credit institutions. Perhaps the most ambitious experiment by a credit agency has been the so-called Waverly Project in Baltimore, an experiment in "neighborhood conservation" conducted by the HOLC. After a basic study to determine the causes of blight and decay in the Waverly area (in which the HOLC was heavily interested), the HOLC has begun forming neighborhood organizations which are to cooperate with HOLC, the Baltimore banks (which also own mortgages on properties there) and the city planning commission in the rehabilitation of the neighborhood. This will involve, first physical repairs to the houses themselves, and second, the redesigning of streets and open spaces, changing zoning regulations (both as to use and space coverage), and the development of a Master Plan with the approval of the City Plan Commission. This type of rehabilitation is, in essence, similar to the plans of neighborhood replanning advanced by the National Association of Real Estate Boards and the New York Merchants' Association and other groups, except that in Baltimore the neighborhood groups have not been armed with power to condemn, and the lead has been taken by the banks rather than the property owners or other promoters. The Waverly project has been going along successfully, and HOLC has now started preliminary studies in the Woodlawn area of Chicago (just south of the University).

The Waverly project, and the Milwaukee Properties Bureau, Inc., indicate that, while the primary interest of the credit institution is to get rid of its property with the least financial loss, it is not unaware that neighborhood stability and other environmental factors have a vital bearing on the present and future values of properties held or mortgaged. It does not seem remote to assume that in cities where a vigorous program of land planning is being prosecuted, the Federal credit agencies will cooperate whole-heartedly. While we can hardly expect the credit agencies to take the lead (as they did in Baltimore) there is every reason to believe that they will fall in line with local efforts, and use what powers and influence they have to stabilize property values, check the spread of blight, and encourage a more rational pattern of land use.

As to land acquisition itself, there is no reason to believe that Federal credit agencies would be less than cooperative. Their only immediate interest is sale of the property at no loss. Their long run interest is cooperation in local planning efforts by giving the public body first chance at properties about to go on the market. While the number will not be great, and mortgage foreclosure will never be a primary line of attack on acquisition problems, no agency acquiring land should overlook the chance to pick up properties in this way. Credit institutions are easier to deal with than individual home owners (as the experience of the USHA shows); they attach no sentimental value to the properties they are selling; and with their cooperation, not only could mortgage foreclosure become a useful acquisition technique, but local

land planning authorities might well enlist the sympathy and support of banks and bankers in their future planning programs.

5. GIFT

Acquisition of land by gift, like certain other acquisition techniques discussed here, is a device of limited application. It cannot be counted on as a regular or dependable source of land, but neither can it be neglected as a possibility. While it is not likely that citizens would give land for such humdrum municipal purposes as sewage disposal plants or police stations, the city may often enlist the sympathy of its philanthropists for some such project as a zoo, a botanical garden, a public playground, or a waterfront recreation area.

A study of donated park and recreation areas conducted by the National Recreation Association several years ago indicated that 1/3 of the total municipal park acreage had been acquired through gifts. Again, in a study of municipal and county park systems in the United States for the period 1931-35, it was revealed that gifts of land exceeded in value all other forms of gifts. One hundred and eight cities reported land donated for park purposes with an estimated value of 9½ million dollars. Sixteen counties reported gifts of land totaling in value $668,350.00. Gifts other than land for municipal and county park systems total $2,667,321.18 during this five-year period.

Information is not available for all State park systems but in general a great proportion of State park land has been donated. In 28 States which have reported the method of acquisition of park land, 254,855 acres were acquired by donation as against 229,380 by purchase. For

economic management. The Forest Service's exchange procedure permits the exchange of land for land, or of timber for land and timber, and has served not only to increase the effectiveness of both public and private forest management, but has also safeguarded the livlihood of many communities dependent for their existence on forest resources. From the inception of its exchange program to June 30, 1939, the Forest Service had acquired approximately 2,450,000 acres of land in exchange for 644,000 acres of land and timber; and during the last five years, it is estimated that the exchange procedure has expanded the total amount of land bought by 709,000 acres, or about 8½%.

There is no reason why this technique could not be used to equally good advantage in urban areas. Even under existing conditions it would be a valuable supplement to other acquisition techniques; its value would double if it were accompanied by the establishment of a central land purchasing agency empowered to acquire lands and hold them until they could be used (or exchanged for lands that could be used). Through such an agency, land could be exchanged not only between government and the private owner, but also between different units and levels of government.

The obvious and overwhelming advantage of exchange is that every piece of land, of whatever type or wherever located, becomes potentially usable for municipal purposes. If a city abandons a firehouse near the center of town, and has no use for the land, it may be able to exchange this small but valuable plot for a much larger area near the outskirts, useful as a park or playground. If a city acquires perfectly good residential properties by tax reversion, it need not dump them on a distressed market: it may be able to exchange them for properties in a

example, South Carolina secured all of her 22,844 acres of State park land by donation; Maine acquired 60,100 of her 68,930 acres by private gift (and the remainder from the Federal Government); in Virginia, considerably more than half the State park system was the result of gifts; and Georgia purchased only 1½ acres of the 11,085 acres in its system.

Thus, while gifts of land must be considered as "windfalls" to the city, the wind may blow fairly often, and the city should be ready with a basket or an outstretched apron to catch the fruit.

6. ACQUISITION BY EXCHANGE

Acquisition by exchange is a method of supplementing other land acquisition technique. While it may not add anything to the total value of public land holdings, it permits the unit of government involved to increase its holdings of a particular type of property, or in a particular section of the city. In land assembly projects, where the desideratum is not merely land, but a continuous pattern of public ownership, the ability to swap parcels within the purchase area for parcels without can be an especially valuable tool.

No systematic program of exchange has yet been tried in urban areas. However, the United States Forest Service has utilized exchange procedures for over 15 years* in most of the 160 National Forests to consolidate its holdings and produce a pattern of ownership more susceptible of

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* Under authority of the Exchange Laws of March 20, 1922, and March 3, 1925.

blighted area or slum marked for clearance. If the Home Owners' Loan Corporation, or the Federal Deposit Insurance Corporation, for example, are forced to foreclose a property, they may be able to exchange it for a better property, better located, or sell it to the city, which in turn could exchange it for a parcel needed for some public purpose. Banks with sour property in their portfolios might be able to work out fairly extensive exchanges with cities, exchanging blighted properties destined for public ownership in return for potentially profitable properties in the urban peripheries. This has, in fact, been done, in Syracuse, N. Y.

The first advantage of exchange, then, is that it provides a useful outlet for property which, inadvertently or not, has come into public ownership but for which there is no public use. A second advantage is that it helps the city in dealing with property owners in purchase areas. One of the principal reasons why owners do not like to sell is the bother of finding and acquiring a new home. If the acquiring agency can offer him a number of parcels similar to the one now occupied at attractive figures, however, the owner who would sell only under pressure may exchange willingly.

Thirdly, exchange will allow governments to spread their land acquisition costs over a number of years. If a city, for example, knows that it can exchange properties on a dollar for dollar basis, it can pick up a parcel here and a parcel there when the market seems advantageous, or foreclose a tax lien somewhere else, and build up -- at low prices -- a reserve of exchangeable land which can be called into play when a land acquisition project gets under way. The importance of time in land assembly cannot be overemphasized. Rooting up the population of ten city blocks in a six-month period will obviously cost more, and make

There are several reasons, stemming from the fact that while the artificial prices are enforced, the land stagnates. If the land in these stagnant areas is now in its best use, this has no serious consequences. But usually a large portion of it is unable to meet the competition of newer areas; buildings are old and obsolescent; block and neighborhood layouts are unattractive and inefficient; business and residential properties are simply not designed to fill modern needs. The result is that before these areas can be put to their ultimate and logical use, there must be considerable rebuilding or rehabilitation, in many cases tantamount to starting fresh. If property owners refuse to take a realistic view of land values, these areas will simply not be rebuilt. This fact already manifests itself in many large cities today, where all the new building and renting is going on either in the suburbs and outlying business centers, or in the down town skyscraper districts, skipping over the intermediate areas of inflated land values.*

The first reason why these land values should be deflated is to keep the property owner from cutting his own throat. He will not sell at a price that the logical user can pay, forcing this potential customer elsewhere. When the owner wakes up to his mistake, the demand is gone, and instead of realizing a legitimate price for his land, he gets nothing.

Second, forcing the logical user of a piece of land elsewhere creates a wasteful urban pattern. The old areas are already equipped with streets, sewers, water mains, electricity, gas and the other municipal services

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* Henry Wright "Sinking Slums" in Survey Graphic for August, 1933.

There is a fifth reason for deflating land values, a reason more compelling from a Government's standpoint, and that is that public agencies can very rarely make free market transactions. They are usually bound by some compelling reason or other to acquire certain tracts. When these tracts are within the areas of inflated land prices, Government is forced to pay the fictitious price, and the whole people, in effect, bail out the property owner at his own figure. Even resort to condemnation does not break down the inflated price, since awards are almost always made on the basis of expert appraisals, free market prices for similar properties, and so on, with due allowance for speculative hopes and the value of the land for its highest use, tending to hold prices at the owners' level rather than to bring them down to approximation of true value.

Thus neither Government nor private capital can engage on large scale rebuilding and rehabilitation programs in the areas which need them most. The United States Housing Authority (and its predecessor, the Housing Division of PWA), have in fact gone into these areas and have paid the high prices demanded. The agency has justified this on the value of these projects as demonstrations, and it has been able to keep rentals down by operating subsidies. But private industry cannot employ these means, and Government cannot do it on a large scale; and without both Government and private industry attacking the problem hammer and tongs, it will be a long time solving.

Housing, of course, is only a dramatic example. Public acquisition of urban land serves many other objectives, as pointed out in Chapter III,

such as police and fire protection. They presumably have transportation lines, stores, schools, and so on. If the potential users of these services are forced elsewhere, all these facilities must be duplicated. If people and businesses move to the periphery instead of locating in the perfectly acceptable existing areas, commuting and transport charges go up. Obviously no one gains and everyone loses.

Third, during the period when the property owner is still expecting to realize his inflated land value, he has little concern for his property. If he owns buildings, he is reluctant to make repairs or renovations, and the area quickly becomes a slum -- residential or industrial. If his land is vacant, he is likely to occupy it with a junkyard, a parking lot, or billboards, usually to the detriment of neighboring property. Since he is not interested in finding a permanent profitable use for his land, but merely a stopgap "tax payer", he undercuts the rents of legitimate land owners, dragging down property values all over the city. Letting properties depreciate during the "waiting period" results in greater total loss to the owner and the community than if the rehabilitation starts at once. Buildings only partially obsolete, or in fair repair, may be salvaged by rehabilitation, but if artificial prices keep out potential developers, public or private, the buildings continue to depreciate until they are worthless.

Thus because this property does not change hands in free market transactions, the inflated values stifle business and building activity, create an inefficient urban pattern, encourage substandard residential and industrial accommodations at cutthroat rentals, and lower the ultimate value of the very properties which are being held for fanciful prices.

which become more difficult, or even impossible, of attainment when land prices are inflated. We need today wide rights-of-way protected by park strips for our arterial highways, we need large open areas for recreation, we need to replan business areas as well as residential neighborhoods: these things will be expensive enough without adding to their cost large ransom payments for property owners who have obsolete notions about the value of their property.

What Keeps Land Prices Up?

When a stock market speculator - or even a so-called investor - loses money in the stock market, he takes his loss and considers the incident closed. When a speculator or investor in real estate miscalculates, however, he finds it more difficult to accept his loss. There are several explanations of this, which taken together may explain the stubborn refusal of property owners to admit, by selling at a realistic price, that they have lost money.

In the first place, stock certificates (or lottery tickets, for that matter) are obviously worth nothing in themselves, and the buyer knows he is only getting a claim to wealth or profits. But a real estate buyer buys land and improvements - tangible, usable goods - not realizing that a good part of the purchase price may be speculative hope. When the possibility of speculative gain disappears, or when obsolescence and depreciation lower the site and building values, he finds it hard to admit that his property is worth less now than it was when he bought it. After all, everything he bought is still there: building, site, utilities. Why has it declined in value, he asks?

Even if the owner knows that its present open market value is less than the price he paid, he considers this a "depressed market", and he thinks that he will be able to salvage his investment when the market returns to "normal". This is, of course, very seldom true. The only "normal" market is a rising market in expanding areas, and the property we are speaking of lies in areas where expansion has ceased or decline has begun. But the real estate dealers and home town boosters have so instilled their optimism into the typical property owner that he is sure it is only a question of time before the "inevitable" rise in realty values floats him off the rocks.

The basic factor in keeping land prices high, then, is optimism based on past history. By disregarding the taxes and interest chargeable against real estate investments, and by forgetting the periodic crashes which wipe out everyone, the property owner is convinced that land values always rise, and when they do he is bound to make a killing.*

A second factor in high land prices is overzoning, which confirms property owners in their optimism. In many cities, the amount of land zoned for "business", "commercial", or "industrial" use is two to a hundred times as much as is needed. This means that a great many property owners in areas so zoned are encouraged to believe that their property will eventually be needed for such uses, which helps hold the price up.**

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* For a convincing refutation of the optimistic theory of perpetually increasing realty values, see Homer Hoyt "One Hundred Years of Land Values in Chicago". (U. of Chicago, 1933).

** A realistic analysis of land needed for various purposes is contained in Harland Bartholomew's "Urban Land Uses" (Harvard City Planning Studies IV, Cambridge, 19__).

A third factor which strengthens the determination of the property owner to "enforce" his price is overassessment. When land values are rising, of course, property valuation assessments are raised with them. Reducing these assessments is a painful business for any city; in many cases city assessors are bound by assessing formulae or other rigidities which would slow down the process even if its desirability were admitted; and assessors are, like property owners, often prone to judge values on the basis of possible rather than probable intensity of use. So the property owner, confronted with a realistic bid for his property, points to the high assessment as justification for his unrealistic asking price.

A fourth factor upholding the price level is the structure of credit that has been superimposed on these properties. Banks, building and loan associations, and other lenders were not immune from the speculative optimism of the boom days, and frequently issued mortgages based on putative earning or market values -- values which cannot be realized. The liquidation operations of the Home Owners' Loan Corporation, for example, show that the present values of thousands of properties are well below the sum for which they were mortgaged. Yet the mortgage is a fixed obligation of the owner, and he will not or cannot sell for less than the mortgage. Even if the mortgage has become delinquent, and the property foreclosed, the mortgagors are reluctant to sell for less than the mortgage or book value. In many cases, in fact, they could not afford to squeeze the water out of these assets because of the damage it would do to the balance sheet. So the "hard-headed banker", like the individual

owner, hangs on to such properties, hoping that eventually another boom will allow him to sell at no loss, protecting the bank's profit and loss statement by listing these dubious properties as assets at their book value.

A fifth factor which keeps up the property owner's optimism are the occasional rumors and whispers that "the Government is going to do something about it." The impression is abroad, often with the help of local officials, that Uncle Sam or the State is going to buy up the whole area for a housing project, is going to tear it all down for an airport, is going to make a playground, a parkway, swimming pools, anything; some new improvement is going in three blocks away; property values are going to rise again; everybody will be rich. Up go the prices, preventing Uncle Sam or anyone else from "doing something about it". It is probably impossible to prevent or check these rumors, but at least responsible officials could refuse to give them currency and authority, and harp a little less on the "rights" of property owners in their particular precincts or wards or cities.

Of course, it is not always misguided optimism that keeps the level of land prices high. In many cases the owner has a perfectly legitimate reason for not wanting to sell at any price; or he may be realizing income from the property sufficient to justify the high asking price. In such cases, of course, it is not possible to deflate prices, but it may be possible to deflate values.

If for example a property owner is realizing a large profit by renting substandard accommodations, by overcrowding his tenants, by making no repairs or renovations, and by offering such slum housing at

cutthroat prices, he may indeed set a high valuation on his land. No part of his income goes for maintenance or depreciation of the building, so the whole of it is capitalized as the value of the land. This is a true valuation, in the sense that any other person willing to engage in that type of activity would be willing to pay that price for the property. Similarly high valuation may be set on properties used for other illegal, illicit, or antisocial activities. But when society has decided that these activities should not continue, society is no longer justified in compensating owners for the loss of income from those activities. Before buying out such owners, therefore, public agencies should take steps to see that such activities cease before negotiations for the property begin. If Government, in other words, is to make an agreement with a property owner to acquire his property, he must come to the conference table with clean hands.

A different principle is involved in the case of owners who, for personal reasons, have no desire to sell. The effect, however, is the same: it forces Government to pay more for land than is justified by the value of the land for its best ultimate use. The most frequent example of this is the property owner who has a sentimental attachment to his home. To him, it is not merely a parcel of real estate, but the place where he brought up his children. He may be too old to undertake the effort of relocating. He may not be able to find as good accommodations elsewhere at the same price. Unfortunately for this type of owner, the Government cannot be asked to abandon public projects on his account, though it can ease his adjustment by such expedients as helping

him find another home, or offering him tax reverted properties at a low figure.

These, then, are some of the reasons why property prices stay high. If the only sufferers were the property owners themselves, Government might well stand by and wait for the day of disillusionment. Unfortunately, almost everyone suffers by the stagnation resulting from this economic myopia. Whether he realizes it or not, the typical owner of this sort of property is playing dog in the manger with urban land - a valuable commodity of which there is a very limited supply. As long as he will not use this land, or release it for use, for its best purpose, Government cannot acquire the land it needs for planning and replanning long overdue, and private enterprise cannot acquire the land it needs for building and rebuilding houses, stores, warehouse, factories, and transport facilities.

Why Not Deflate Land Prices?

It therefore becomes a public policy of great urgency, if not absolute necessity, to deflate the price of urban land.

This statement must at once be surrounded by qualifications. This does not mean that private property is to be taken without just compensation. It does not imply that all land prices are too high. It does not contemplate bankrupting property owners nor destroying the tax base for the sake of acquiring land cheaply. It does not encompass the ruthless use of extra-legal power by Government for a narrow partisan purpose. It is simply a policy to safeguard the whole people against exorbitant costs, to enable Government and private enterprise to put land back into use, and (in the long run) to protect the interest of the very people whose prices are being deflated.

It is often argued that government has no right to deflate land prices, that it is ethically bound to pay property owners a "fair price" i.e. at least what they have sunk in the property. The Committee feels that the opposite is true; that Government has no eithical right to bail out property owners who have made a bad investment, and that it is bound, in fairness to the people as a whole, to pay no more for property than is justified by the use to which it is to be put. The community assumes no responsibility toward a craftsman whose skill has been rendered obsolete by a new machine; when a radio comedian can no longer amuse the public, there is no thought of compensating him for his loss of income; when investors by the thousand bought Steel and Anaconda at all-time highs and watched them fall to all-time lows, the Government offered them neither cushion nor bailing scoop. Why is it under any obligation to insulate property owners against the inevitable results of poor investment? In a capitalistic economy, individuals may invest in whatever enterprises they choose, at their own risk. They take the profits, and they must be expected to take the losses.

This does not mean that one of the risks they take is expropriation at the hand of Government. The deflation of land values advocated here is not expropriation: it does not rob the property of its value to the owner, it does not rob it of its earning power, it does not destroy any value which actually exists: it merely puts pressure on the owner to take a realistic view of present and predictable values. It may be a rude shock to many property owners to learn that they have made an

imprudent investment, or that they have been fleeced. But the urgency of the public's interest in getting land back into its highest social use dictates that land values be deflated.

How Can Land Prices Be Deflated?

Some of the methods by which land prices may be deflated are indicated by the reasons for which land prices are inflated. Others are not so obvious at first. In general, the Committee feels that the methods and techniques for price deflation have other virtues as well. Each one, that is, could stand alone as a desirable social measure; each has the auxiliary effect of deflating land prices; and when taken together they would have a powerful effect on not only real estate prices but land use practices.

Before dealing with deflation of purely fictitious prices, let us take up the question of the high prices that result from land abuse. As pointed out above, these prices may be high for several reasons: overcrowding, renting of substandard space, non-compliance with sanitary or building codes, refusal to maintain or renovate buildings, or other practices that are illegal, illicit, or antisocial. Before the public acquires this sort of property, it should first be sure that all laws and regulations are being observed. Of course, such laws should be enforced anyway, but the projected acquisition of such properties provides an additional incentive. All structures should be inspected to see that they comply with building and fire and health regulations, and owners compelled to make necessary repairs and alterations. Violations of the zoning laws should be prosecuted, particularly the use and density provisions, if such exist. The only alternative to this would be to follow

the British precedent of refusing to compensate owners for the buildings at all, on the ground that they are a menace to health and safety, and condemn (and pay for) the land alone. Criminal and illegal establishments in areas proposed for acquisition and other violators of police regulations should be closed up promptly. If the laws of the state or city are not sufficient to outlaw such lucrative but undesirable uses as slums and vice areas, they should be amended. It is more in keeping with our judicial traditions to legislate these uses out of existence than to buy them off.

In many cases it may be impossible to end overcrowding under existing statutory or constitutional restrictions. It may then be necessary to siphon off part of the slum populations, or at least to allow the existing migration to the periphery continue. Housing projects, for example, might rehouse slum population as far out as is economically possible, rather than on the site of their previous homes. Street car lines and roads and other utilities may be extended to make semi-rural life more convenient. In many ways, Government can assist this draining of population until the density in the downtown areas reaches a tolerable level. (This does not mean draining the downtown area completely, nor encouraging wastefully scattered expansion in the rural-urban fringe. It merely involves getting densities down to a reasonable level in the older sections.)

Having eliminated the worst abuses on land whose high value stems from antisocial activity, then, we are still confronted with the great majority of land in the stagnant areas. On some of this land we have condemned and boarded up unsafe buildings, and forced repairs on certain others, but by and large the owners still feel that theirs are very valuable properties. The prices are still inflated.

One attack on the unjustified optimism of the owners is to rezone these areas. There is no longer any excuse for the overzoning that exists in most American cities today. The land use needs of cities are fairly well known; most cities have reached the point where their ultimate size is closely predictable; there is no reason why they cannot be zoned in accordance with the needs of the next decade or two, rather than of eternity. Zoning is supposed to be a flexible implement of land use regulations. It often serves to freeze undesirable patterns and to protect vested interests against public interest. By rezoning, a city serves notice on property owners that contrary to their expectations their land will not be worth $2 a square foot for a factory or department store, but will always be residential land worth a tenth that much.

A second approach is to reduce tax assessments. If the city plans to take the attitude that this land is really only worth a fraction of what the owner thinks it is worth, it ought to reduce his taxes proportionately. If the ratio of assessed to true valuation is higher than average in these areas, the unfortunate property owners are paying more than their share of the taxes. The effect of reducing the assessment will be to shake the property owner's conviction in his high valuation. If his assessment is cut in half, he may be induced to lower his asking price somewhat.

A third technique would be the untaxing of improvements, throwing the entire burden of the property tax on land alone.* This would have

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* Starting in 1914, Pittsburgh employed a differential rate of taxation on land and improvements, under which buildings are taxed on 50% of their value. The "graded tax" there seems firmly entrenched in public favor.

two effects. First it would reduce the net income, or rent, attributable to the land, or site, thus reducing the capitalization of that part of the property, and making the value lower. At a lower initial price, land would change hands more freely. In the second place, it would not (as our present property taxes do) penalize the owner of a new, modern structure and subsidize the owner of a substandard, ramshackle building: it would induce the owner to rebuild or rehabilitate, or to sell to someone who would. On the other hand, it has been contended with some validity that untaxing buildings would promote undesirable intensity of land use to pay the taxes. This might occur, in the absence of other controls, such as zoning ordinances, which would put a definite limit to intensity of use. Without entering into a discussion of the tax system in general, nor of the possibility of encouraging over-intense land uses, it seems plain to the Committee that the gradual untaxing of buildings would at least have a beneficial effect on land prices.

A fourth method of bringing land prices down would be to loosen the credit structure superimposed on so much of the land in these areas. It was pointed out above that not only are credit institutions reluctant to take their losses, but also they may find it impossible to jeopardize their balance sheets by writing down these tangible assets. Here the city is powerless to act alone, but it may enlist the cooperation of state and federal supervisory agencies which have control over banks and banking practices. Under pressure from bank inspectors these credit institutions might be induced to set a more business-like valuation on some of their properties. During the past year, for example, the FDIC

took certain precautionary measures with some of its insured banks. Although the banks were in liquid condition, they were too close to unsoundness for comfort. Rather than wait for the bank to fail, the FDIC protected the depositors and its own liability by making certain changes in the bank's portfolio of securities. The same procedure might be followed with regard to either mortgages or foreclosed properties, both strengthening the position of the bank and reducing the price of the land involved.

Finally, since land prices are high for partly psychological reasons, part of the cure will also have to be psychological. Unless owners of property are willing to cooperate to some extent, Government can never help them salvage their property. If every land owner proposes to hold up the Government for all he can get, and if every local realtor, lawyer, and banker will help him, with the support of the town bureaucracy, neither state nor federal programs will make much headway. Every responsible leader in the community should be enlisted to assist in an educational campaign designed to give property owners a new concept of their responsibility toward the community. On its part, the Government should make it clear that it is not buying land as a form of relief, but as a public enterprise directed toward the common welfare. In most cities, the golden days are over; our urban communities will have to find salvation with just about what they now have in terms of population, land, and industries; they will have to look inward, not upward, for help; and nothing could bring this about faster than the cooperation of the natural and economic leaders of the community.

CHAPTER VI

IMPLICATIONS OF LARGE-SCALE LAND ACQUISITION

No American city today is acquiring land for anything like the variety of purposes, nor on anything like the scale, contemplated in this report. If our cities were to do so, there would obviously be far-reaching fiscal, economic, and administrative implications. This chapter is an attempt to anticipate and prepare for some of those repercussions on civic life. What, for example, will be the effect on the tax base of withdrawing large areas from private ownership? How will cities finance the acquisition of large amounts of land? How will they manage such land to produce revenue or community benefits rather than to multiply municipal expenditures? Will land acquisition programs become the tool of special interest groups, or can they be honestly and efficiently managed in the public interest? What will be the effect on the real estate market of large public purchases? And conversely, what effect will the existence of municipal reserves, ready for sale, have on the price structure of land? These questions cannot be categorically answered in the abstract, of course, but here and there fragmentary evidence gives urban planners a clue to the implications for which they must be prepared.

Before attempting to predict the implications of land acquisition programs, however, it will be well to get some idea of the present land holdings of American cities, and of their future needs.

In the first place, it should be stated that our cities have done a good job in acquiring land for public purposes. Counting in streets,

parks and playgrounds, open spaces, land never privately appropriated, and lands reserved by the city along waterfronts, on islands, and elsewhere, most cities today own somewhere between 25% and 40% of the land within their boundaries. In the main, this land has been acquired at relatively low cost. Some of it has been given to the cities, some has been reserved from large holdings originally owned by them, some of it (including the large area in streets) has been deeded to cities as a condition of private exploitation of the land, or acquired through benefit assessments. Again, some of it (like Central Park in New York) was bought by the cities when it was still well outside the area of close settlement, at low figures.

It is impossible to obtain an accurate estimate of either the value or extent of municipally owned land in the United States, but the Financial Statistics of Cities (published by the Census Bureau) for 1936 publishes statistics as to the total value of land, buildings, and equipment held by the 94 cities with populations over 100,000. It is impossible to separate the figures for land, buildings, or equipment, but in the subsequent appraisal of land needs it will be well to keep the total figure in mind, to show scale. The 14 largest cities (over 500,000 population) report from $100 to $300 million each (only Chicago substantially exceeding the latter figure) with a total for the 14 cities of $2,723 million. The next 12 cities (population 300,000 to 500,000) range from about $30 to $100 million of property, with a total of $656 million. The next 68 cities (populations 100,000 to 300,000) range from about $10 to $40 million, with a total for the group of $1,294 million. The total for the 94 cities is $4,672 million in land, buildings, and equipment.

The figures above, it should be remembered, represent not only buildings and equipment in addition to land, but also, in large part, land not suited for general purposes. Most of it is now in permanent public use from which it could hardly be removed, and much of it is so located as to be useless for the emerging needs of our cities. Watershed land outside the city, for example, would have very little utility for housing projects, playgrounds, or parking lots. Conversely, a building site downtown, even if it could be abandoned, would have little use as a forest preserve, school house, or express highway. It must be borne in mind that the fairly large figures for municipal ownership of real property include much land not suitable and available for general development.

Now, what as to the land needs of American cities for new public purposes? Perhaps two examples will serve to illustrate the magnitude of the problem.

In the provision of recreational land, recreational planners have adopted a standard of about one acre per 100 persons, or about 10% of city acreage. In a study of 16 typical American cities, Harland Bartholomew found that these cities provided a little less than $\frac{1}{2}$ acre per 100 persons, and about 4% of city area. A questionnaire by the Urbanism Committee of the National Resources Committee in 1936 revealed slightly higher figures: about 6/10 acres per 100 persons, and about 5½% of city area. If the cities sampled are in fact typical, it becomes clear that our cities are providing only about one-half the recreational space desirable. Now for the 94 cities covered by the Financial Statistics of Cities, total land

area (as of July 1, 1936) was 2,792,403 acres, and total population (estimated for July 1, 1933) was 37,658,812. Providing an additional ½ acre of land per 100 persons in these 94 cities would call for over 188,000 acres of land; an additional 5% of their areas would involve nearly 140,000 acres. These cities, in short, could use something between 140 and 190 thousand acres of land. If this land were bought at, say, 25¢ a square foot, or about $10,000 an acre, it would involve between $1,400,000,000 and $1,900,000,000, or over a third of the total value of land and buildings and equipment owned by all 94 cities. These figures, incidentally, tally fairly closely with those for the present value of property now devoted to recreation: $1,135,000,000. The somewhat higher costs of duplicating existing recreational facilities are due to the fact that the land would now have to be acquired at higher prices, especially for the parks in the congested areas where the shortages of open space now exist.

The second example deals with housing. Various estimates have been made of the potential market for low cost housing, ranging as high as 14,000,000 dwelling units for the whole United States during the next 15 years.* For the purposes of this discussion, however, let us assume that roughly 20% of our urban families should be housed in public housing projects. Twenty percent of the 37,658,000 people who live in the 94 largest cities of the United States is just over 7,531,000 people. At 3½ persons to the family, this means 2,155,000 family units. Now the operations of

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* Walker, Mabel Urban Blight and Slums, p. 83

the U. S. Housing Authority over the past three years show that the average cost of land for public housing has been $370 per dwelling unit. At current costs, the sites necessary for 2,155,000 dwelling units would cost $797,350,000, or almost one-fifth of the value of all the property holdings of those 94 cities: more than the present value of all the electric light, power, and transit systems, ports, docks, wharves, airports, auditoriums, halls, stadiums, and miscellaneous public service enterprises of those cities. Even half this much land, to house 10% of these urban dwellers, or $400,000,000 worth, is a large amount.

The Problem of Financing Land Acquisition

It is apparent that the amount of land our cities could usefully dedicate to public purposes is very large, and we may well ask ourselves whether our cities can afford to acquire this much land at current prices. If this is out of the reach of most cities, they face the alternatives of acquiring less land, or getting it at lower prices.

Going back to our 94 cities for a moment, let us assume that they decided to acquire, over a ten-year period, as much land as would be needed for just recreation and housing: a total of about $2,400,000,000. This would involve acquisition of about $240,000,000 worth of land a year. In 1936, the total revenue receipts, from all sources, of these cities was just under $2,900,000,000. Spending an additional $240,000,000 annually would mean increasing revenues by over 8%. Considering the financial condition of most municipalities, this would be virtually impossible. The general property tax, which produces almost 2/3 of municipal revenue, has reached the breaking point, in the estimation of most students of public finance, and raising the additional 8% on the remaining 1/3 of the sources would mean increasing revenue from these sources by 24% -- again almost impossible.

There have been several suggestions made for special devices for raising money specifically for land acquisition. One suggestion is the levying of a special tax of 0.5% on the assessed value of all land in a city, for a definite term of 10 or 12 years, the proceeds to be applied to the purchase of slum property to the extent of 5% of the total assessed valuation of the city, which would then be turned into parks. A proponent of this plan suggests the probability that acquisition of 5% of the total assessed land values of the municipality (for parks) would add more than 5% to the values of the other 95% of the property. Initially, this proposal would involve a 5-mill increase in the tax rate (or $5 on the $1,000) which some cities actually could not stand; and it is also doubtful whether provision of additional park space would increase the total value of the property benefited unless the increased attractiveness of the city drew new residents or there was an increase in the income of the residents which they could spend on increased rent. Lacking any total increase in rent payments over the whole city, the effect of such improvements would be merely to shift values, not increase them.

A second proposal which might serve as a partial solution to the problem is that the city offer certain large holders of land (like golf courses or estates) tax exemption for a stated period of years, at the end of which the city would receive title to the property. Taxes are now a very real burden to extensive land users, and such an agreement might well be to their interest as well as that of the city, which would

be acquiring large tracts of land without capital outlay and at relatively low annual cost. A variant on this method of acquisition might be used in dealing with financial institutions. Here properties wanted by the municipality might be turned over to it in return for cancellation of tax arrears on other properties held by the institution. Again, this is a partial solution.

A third suggestion, originating with Frederic A. Delano when he was Chairman of the Central Housing Committee,* is that the Federal government has very direct as well as an indirect interest in sound urban land use: it must protect Federal investments in urban land, and acquire sites for Federal activities, as well as take some responsibility for the general welfare of urban citizens. It would therefore not be outside the scope of the Federal government, he suggests, to grant subsidies to assist cities in planning new expansion, replanning blighted and obsolescent areas, clearing slums, and in general developing a more rational pattern of urban land use. These subsidies, of course, would be granted for direct purposes involving, among other things, land acquisition; but their continuation should be contingent on the establishment of an adequate land use plan for the city, enactment of legislation to enforce it, and the prosecution of a vigorous land use policy by the municipality.

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* American City, _____ 1937

These, then, are three methods by which the City might raise revenue for land acquisition outside the regular budget. Other alternatives concern the possibility, not of raising more money, but of reducing the amount of money needed to acquire the land.

First, there are the auxiliary techniques for reducing land prices, suggested in Chapter IV. As stated there, the city should employ every possible technique to squeeze the water out of land prices before it attempts to acquire.

A second possibility, limited it is true, but one which may save the city thousands of dollars, is making land instead of buying it. In almost every city, there is some land being made by filling swamps and dump holes, but there have been more spectacular examples. Much of New Orleans, for example, is "made" by the levees, since the land lies below the level of the river. The whole Back Bay district of Boston, and the extensive lake shore parkways of Chicago, are built entirely on made land. The 1216 acre site of the New York World's Fair is entirely made land, and when turned over to the city will be the greatest park easily available to millions of New Yorkers. The new National Airport at Washington, being built in a bend of the Potomac, illustrates how money may be saved by making rather than buying land. The 729 acres of this airport will be within five minutes' drive of any part of downtown Washington, yet it will cost only a little more than 10¢ a square foot. Similarly, the Pittsburgh Housing Authority finds that it saves as much as 50¢ a square foot by buying and grading hill top land rather than buying valley land already suitable for building.

Third, the city, if financially pressed, may limit itself to acquiring land by tax forfeiture, gift, cession, and other inexpensive methods. Much of the outlying land reserves needed to control future expansion can be acquired through tax reversion proceedings. In the future, as in the past, the city may require cession of streets, parks, public school sites, and other areas as a condition of approving subdivisions and extending municipal utilities. Gifts of land for specific purposes, especially parks and recreational areas, as has been pointed out above, are more fruitful sources of public land than the casual observer would think.

We may wish, of course, for some powerful and universal method of acquiring land at low cost and without injury to private property owners. But we cannot turn the clock back three hundred years and grant every city 10,000 acres of public domain: we are faced with the facts that we must compensate owners for their land, and that most useful urban land is owned by someone and has some value. Unless our cities, with the help of the Federal and State Governments, are willing to pour millions upon millions into land acquisition, they must reconcile themselves to a fairly slow and steady program of public acquisition, using this makeshift here and some other partial solution there, taking advantage of this condition here and making the most of some other good fortune somewhere else. The principal drawback now is not that the cities do not have adequate legal means of acquiring land, but that their charters and financial resources do not grant them adequate authority and scope of operations to make use of what they can now acquire.

The Tax Base

The general property tax now provides our cities with about 2/3 of their revenue. Every public acquisition of tax-paying land for non-revenue-producing uses chisels away a little of the tax base, forcing the load on the property remaining in private ownership. This limits the amount of land that can be safely acquired by the public just as effectively as does the burden of the original cost.

As a minimum, let us assume that our cities would find it desirable to acquire property within their boundaries representing 10% of the assessed valuation. Cutting down the tax base 10% would -- if the same tax rate were maintained -- cut down revenues 10%. Now if this loss of 10% had to be raised on the remaining 90% of the tax base, it would involve raising the tax rate by 11%. A city with a forty mill rate, in other words, would pay a 44.4 mill rate, or $44.44 on the $1,000 instead of $40.00. This is a fairly substantial increase, but not beyond the capacity of some cities to support. If to this, however, were added at the same time the cost of acquisitions, it would probably break all but the strongest cities. In most jurisdictions, students of public finance reiterate, the property tax has been pushed as far as it can go, and it seems fair to conclude that in general, losses in revenue caused by removal of property from the tax base will have to be met from other sources than the property tax.

A loss of 10% of the property tax revenue will mean, for the 94 cities we have been discussing, a loss of about 6% of total revenue. To make this up will mean increasing the revenue from other sources by 6/33, or about 18%. Where this increase is coming from, we cannot say. There

are business taxes, license fees, special taxes and assessments, poll taxes, profits from municipal enterprises, departmental receipts and fees, and grants and subventions from both State and Federal Governments. The Committee cannot undertake to go into the complex and limitless question of municipal revenues: it is aware that the whole problem is under discussion, and that our whole local tax structure may be overhauled extensively. It feels, however, that the real property tax base will tend to be smaller rather than larger, and that the costs of land acquisition and other land improvement programs cannot be charged to land per se, but must be met from the general revenues of the municipality, whatever their source.

Economic Implications

A broader question of cost, not to be treated as a problem purely of public finance, arises when we ask "What is the social utility of public land acquisition?" "Even if you can afford it, in cash terms, does it pay as a community activity?"

There is, of course, no social utility to land acquisition per se. There is only social utility to the things that may be done, or prevented, when land is in public ownership; and the cost of the land is part of the cost of the thing that is done or prevented. The question is raised here because land acquisition is likely to be a large item in the cost of, and in many instances an absolute prerequisite to, the prosecution of a land program. It is assumed that if the program could be carried out and the objective reached without the acquisition of land, no city would go to that expense. To the extent that the city (or other public body)

acquires the land involuntarily (by tax foreclosure, mortgage foreclosure, escheat, etc.), this will not be true. But in the main, two questions of social utility should be raised: What is the value of the end we want to attain? and how important is land ownership to that end?

To cite an example, it is certainly desirable, from a social standpoint, to move people out of slum housing and tear down the housing. If this is done when there is a housing shortage, however, and when slum properties yield high returns acquisition of the land and buildings will be expensive and will intensify the miseries of the housing shortage. But if the centrifugal forces of the city are at work emptying the property, and rents are falling generally, it might be cheaper to wait until the property has dropped in value. By waiting even longer, the buildings may become so old and insanitary that they may be condemned, and emptied of people without having to acquire the land at all. Meanwhile, of course, many citizens would be living in substandard dwellings and blight would be spreading to adjacent properties. In making the decision as to when to buy out the slum, or whether to buy at all, there must be reckoned up on one side the respective costs, and on the other side the respective benefits, of the several courses of action open to the city. If the benefits seem to outweigh the costs, there is social utility to the project; and if that particular project has more social utility than any other in the city, it should be carried out at once.

To many people the concept of social utility may seem a little remote from the hard and practical workings of municipal government. If we remember, however, that social utility includes not only broad and non-calculable benefits, but also cash savings in municipal expenditures, increases in revenues, and recapturable increases in property values, even the most practical man will see that the concept has its uses. A slum clearance project may look like a dead loss to the city treasury, yet if we look carefully at the social utility we may find that the reduced costs of municipal services, plus the increases in taxable values of neighboring property, may more than pay for the cost of demolishing the slum. A highway widening may look expensive at first glance, but it may return computable savings to the citizen (in saving time, lowering transit costs, and cutting delivery charges) sufficient to justify acquiring the land and widening the street with his money. Other projects, like the establishment of playgrounds, may show no direct and recapturable benefits, yet they are not only socially useful but socially necessary to maintain the standards of municipal decency we have set for ourselves.

There are, then, three classes of socially useful projects involving land acquisitions: (1) those returning tangible and recapturable benefits to the public body carrying them out; (2) those returning obvious (and perhaps calculable) benefits to the city or the citizenry as a whole; and (3) those whose benefits cannot be exactly calculated, but which are required by our municipal standard of living. In terms of long run economic

cost (as against fiscal considerations of yearly income and expenditure) each type of project is "sound", or "self-liquidating". It returns to the community, that is, more than it takes out.

Unfortunately, there are also projects which have social disutility. They return less to the community than they take out, and it is eliminating these projects that an assessment of social utility may be just as effective as in justifying useful projects. For example, a city is served by two bridges across a river, which are adequate for its needs. A third bridge would cost a good deal, yet return nothing to the city in benefits, for the old bridges were adequate. Or again, a city might undertake to construct a through highway to connect some outlying settlement to the business center. The utility to the residents of the outlying center may be overbalanced by the cost of the project and the disutility of sending traffic through hitherto quiet neighborhoods on the route. Similarly, the approaches to the bridge above may blight the surrounding property. Even if the highway or the bridge did no positive harm, the benefits might not equal the expenditures, and might well be less than the benefits accruing from some other use of the public funds.

The deceptive thing about many projects with no social utility, furthermore, is that fiscally they may be profitable. In the highway project above, for instance, the costs of construction might be assessed against the adjacent property along the way. The costs would thus have been met with no load on the city treasury. Yet not only would there be no net

social utility to the project, but the very property blighted by the new traffic would also be forced to pay for the highway. Likewise, a city might successfully assess the imputed benefits of a new park against the owners of abutting property, but if their property were not able to earn on the additional cost imposed -- if the demand for that property were not increased, that is, with a corresponding rise in rental or sale value -- then the owners have received no benefit from the park. In evaluating projects, therefore, city officials should make sure that the social benefits of the project outweigh the social costs, whether or not the cash outlay can be recaptured.

Public Land and the Real Estate Market

Another implication of public land acquisitions in urban areas will be their effect on the real estate market. As long as municipal operations are conducted on a small scale, and the city puts all its acquisitions into permanent use at once, there will probably be little effect on the real estate market. Locally, in land assembly areas, there may be holdouts and a rise in asking prices because the government is footing the bill, but there will be no city-wide repercussions. However, when an acquisition program has progressed far enough to make the city a potential customer for almost any kind of land (either for use or exchange) in any part of the city, and as soon as it has a reserve of salable or exchangeable parcels and acreage, it may exercise a considerable influence over the effective supply and demand. Even now, in certain jurisdictions, it has been found necessary to make special provision for the orderly disposal of tax reverted properties lest sudden sales demoralize the real estate market completely.

This power could theoretically be used to stabilize the market. Land could be bought when cheap, and a glut on the market, and sold when dear, to control inflation. Unfortunately, there is a great deal of fiscal pressure on cities to spend when they have the money, in good times, and to sell when they need money, in periods of shrinking revenues. In good times, furthermore, the volume of urban construction increases, calling forth added municipal expenditures for streets, utilities, schools, and incidentally land. The city may not be able to suspend land buying operations when prices are high, therefore, nor to make large outlays for land when prices are low. Counterbalancing this tendency will be, first, Federal expenditures for local public works during times of depression, necessitating public land acquisition for sites, rights-of-way, etc., and second, the fact that some forms of land acquisition (such as tax delinquency and mortgage foreclosure) are more effective in extensive periods of depression. On the upswing of the cycle, theoretically, Federal expenditures for public works will taper off, and the city will be anxious to sell off lots it foreclosed for taxes during the depression.

It is impossible, of course, to predict what is going to happen in whatever municipalities adopt land acquisition programs. It would be presumptuous to attempt to control it. But city officials should realize their real estate transactions are likely to have a dominant effect on the market, and should guard against undesired implications of the policies they adopt.

Administrative Implications

What would be the administrative implications if a number of American cities set about spending 5% of their annual budgets for land, or acquired additional portfolios of property running from ten to fifty million dollars?

The first question is one of administrative organization for land acquisition. This is treated at some length in Chapter VI. It will suffice here to say that the problem arises, not so much after the land has been dedicated to its public use and is under the jurisdiction of some operating department of the city, but during the period when the land is being acquired and held pending final transfer to the operating agency. Our 94 largest cities now administer some $4,672,000,000 worth of property, including $2,570,000,000 in municipal utilities and $263,000,000 in institutions, and control a large area of streets and other public space. There is no reason to believe that they will not be able to manage new acquisitions as efficiently as they now handle the old. The danger points are the acquisition itself, and the use and control of greenbelts, land reserves, and other holdings not immediately put into permanent public use.

For this job, the Committee feels that cities should establish centralized machinery, not only to coordinate acquisitions by the city itself, but also to facilitate close cooperation with other agencies of Government. Some one planning or purchasing agency, for example, should deal with the Federal agencies making grants in aid of local land

programs, should deal with Federal and State agencies actually acquiring land for public purposes, and should negotiate with Federal and State credit agencies acquiring land or mortgages on land in urban areas. The Committee also suggests that cities investigate the possibility of co-operative Federal-State-local action in planning and operating land acquisition programs.

Land Acquisition and Politics

It is unfortunate but unavoidable that whenever a public treasury contains any considerable amounts of money or negotiable property, it becomes a temptation. Every sinking fund, every cash reserve, every unexpended balance is a straw at which drowning politicians will clutch in an effort to tide the city over a "temporary" financial emergency. If our cities are to hold large amounts of property in reserve for long-range programs, they should be protected against raids inspired by the exigencies of the amount.

Assuming, however, that municipal land holdings could be safeguarded from unwise or dishonest manipulation, can we adequately protect that almost undefinable thing, the public interest? Every person in a city has an interest in the land, of course, but some interests are more vociferous and more powerful than others. In whose interest will land be acquired and managed? Will slum clearance projects be used to salvage bad investments or to promote social welfare? Will highways and parks be established to enrich abutting property owners or to make a healthier, more efficient city? Will the city's land programs be used to freeze the status quo.

however undesirable, or to disrupt any status quo, however satisfactory? For whom should the city be run, anyhow -- the lower third, the landowner, the industrialist, the taxpayer, the bureaucrat, the "public"?

There is always the danger that by putting the city into the real estate business, we are merely opening one more field to the political pressures, legitimate and illegitimate, which are constantly at work. The introduction of an administrative or procedural reform, like the city manager plan, proportional representation, or a land acquisition program, is no automatic guarantee that right will prevail and that the public interest will be promoted. Providing the city with tools for a vigorous and progressive land policy can neither reconcile conflicting interests nor solve a single land problem - it can merely give the government of a city a chance to prosecute its aims more effectively.

If we put American cities "into the real estate business" what will be the political repercussions? Will there not be serious objections to "governmental competition"?

The Committee believes that the opposition will be largely irrational: not valid objections based on economic interest. The Government, after all, will not be in the real estate business in the sense that it competes with private realtors, but only its traditional business of acquiring land for public purposes and disposing of public land no longer needed. The city's activity will be in fields where private enterprise does not now operate. In foreclosing tax delinquent property, for example, or in condemning land for highways, the city operates by virtue of powers no private person possesses. In providing

low cost housing or constructing municipal docks and markets, the city operates in fields affected with a public interest, fields where the public always has acted, and where present programs differ only in degree and not in kind. At first there may be loud resentment, especially from vested but uninformed interests; but when it has been discovered that the city's operations have a generally healthy effect on urban property values, when old eyesores have been removed, when submarginal land has been taken off the market, when new parks and greenbelts enhance or protect the value of real property investments, when sound traffic planning has reduced congestion, and when expansion is orderly and efficient, the talk will die down, and urban land acquisition programs will become as accepted a part of municipal government as central purchasing or the executive budget.

CHAPTER VII

ORGANIZING FOR LAND ACQUISITION

When a city has decided, as a matter of public policy, to implement its planning activities with land acquisition on a fairly large scale, it must face the problem of administrative organization. After the requisite enabling legislation has been passed, after the objectives of the land acquisition program have been sketched out in rough, after the city has assessed the several acquisition techniques available to it, and after it has prepared itself for the repercussions and implications of the program, it must still organize administrative machinery to carry out the program. In some cities, it may be adequate machinery already exists; in most cities, certainly, the component parts of such machinery exist: there are lawyers to search title, there are assessors to appraise property, the city has funds with which to buy land, there are courts in which condemnation proceedings may be instituted, and there are powers granted in the municipal charter. The problem is not so much setting up new administrative machinery as it is streamlining the old machinery and reassembling the parts to do a larger job more effectively.

General Principles

This renovation of administrative machinery for the task of large scale urban land acquisition, the Committee feels, should be carried out in accordance with certain general principles:

(1) Urban land acquisition, as a part of urban planning, is primarily a local responsibility to be carried on by the citizens of an

urban community through their own institutions of government and social action. The participation of the State or Federal governments should be either limited to the contribution of some particular skill or resource not possessed by local government, or restricted by a demonstrable state or federal interest involved.

(2) Wherever compatible with efficient operation, land acquisition should be carried on through existing local institutions. However, it must be remembered that urban plans must be made for urban areas, and not some fraction of an urban area defined by a city boundary. This principle is not intended to discourage the formation of metropolitan planning and action agencies with adequate powers, but rather to prevent senseless multiplication of special authorities.

(3) Land acquisition is not an end in itself, but merely a tool of land use development and control. Unless the objectives of a land acquisition program are clearly established, the city is better off without one.

(4) Land acquisition should not only be related externally to a general plan for city development, but planned internally. If the acquisitions themselves are not carefully programmed, costs will rise and the effectiveness of the control will drop.

(5) The actual operations involved in land acquisition should be centralized as far as possible. This does not mean that all the steps of an actual acquisition, from appraisal to final transfer of title, must be performed by one agency; it means rather that each step of all acquisitions be done by one agency; all appraisals by one set of assessors, for example, or all litigation by one legal staff. When

possible the successive steps should be unified too; but in many cases this would involve unnecessary duplication of staff, while equivalent control could be achieved through careful programming of the acquisitions, as outlined in (4) above.

(6) In cases where land acquired by the city is not immediately turned over to the agency having permanent jurisdiction, the land should be so managed by the acquiring agency as to return the greatest social gain. In the acquisition of land reserves and in assembly projects conducted over a period of years sound management will be especially important.

(7) In programming acquisitions, the city should overlook no possible technique. Mentally at least the city ought to consider each one, starting with the cheapest and simplest. In many cases, in fact, the city might make the acquisition of certain lands conditional upon the ease and economy with which they can be acquired. "If we can get it for the taxes, we'll take it; if we have to condemn, we won't."

(8) Federal and State grant-in-aid policy should follow and enforce the principles outlined above.

Planning Procedure

Whatever the type of administrative machinery established to deal with land acquisition, the city should proceed with its acquisition program only on the basis of a fairly comprehensive plan of urban development. If there already exists a Master Plan or similar map or document, this would naturally serve as the basis for planning land acquisition. If there is no such plan, the administrators and planners of the city agencies using or dealing with land, (streets, parks, schools, water, sewers, zoning board, tax collector, etc.) should be called into conference to devise a suitable substitute. The future land needs of these

departments should be carefully worked out (with the aid of city planning consultants, if such are available), and pulled together on an official map.

After the preparation of this inventory of future needs, the land program can be further refined. For example, purchase areas might be set up -- areas within which the city will ultimately want all or most of the land. These areas might be as small as a school site or as large as a greenbelt, and may include land for a number of complementary uses, such as a housing project, a school, a playground, a business center, and a through highway. A second refinement is the programming of acquisitions in terms of fiscal years. Tax delinquent properties, for example, cannot be foreclosed at will: they must be acquired when the redemption period has run its course; while lands which are to be purchased must be acquired with an eye to the municipal budget. There might also be classification of the lands by the method of acquisition. Vacant subdivisions, for instance, can probably be picked up by tax foreclosure; blighted residential properties would be acquired by a combination of techniques, such as tax reversion plus mortgage foreclosure plus purchase plus condemnation; while a special type of land like the right of way for an express highway in a newly developing part of the city might be acquired entirely by requiring cession from the developers of the area. A fourth refinement of the land acquisition program would be the assignment of priorities to the various proposed acquisitions -- priorities based on the urgency of the program, on the section of the city in which the land is to be acquired, on the acquisition technique to be employed, on the cost, or some combination of these.

Land Management

When land has been acquired by the city, but has not yet been turned over to the department in charge of its ultimate use, it cannot be deposited, like a stock certificate, in a safety deposit vault. It must be managed so as to return as much to the city as possible. The need for management is especially great if the land is to be held for a long time, like a greenbelt or a land reserve salvaged from tax delinquent subdivisions. There have been cases where squatters have robbed the city of title to its land merely by building shacks and maintaining adverse possession for a number of years. But aside from the danger of losing title, the city is in danger of losing revenue as well as losing much of the value of the property.

With each type of property, of course, the problem is different, and it would be impossible to discuss here a complete program of land management, but it is possible to suggest some of the uses to which land might be put while awaiting ultimate disposition. Outlying lands, for instance, may be put into forest preserves, for recreation, conservation, and income, as is done in cities (Duluth). In congested areas, needing light, air, and play space, the highest social use of the land may be open space. Where habitable buildings exist, there is no logical reason why the city should not continue to rent the buildings to previous owners or tenants until the land is needed for its ultimate use. (This may not be permitted by law, but that is not a logical reason.) During the depression several cities (such as Pittsburgh, Columbus, Detroit, and Springfield, Illinois) established "thrift gardens" or subsistence farming plots on

vacant land for the unemployed, which yielded from $25 to $75 a plot annually. Near the termini of transit lines, or in crowded downtown areas, free municipal parking lots might well pay for themselves in lessened congestion costs. Vacant land might be used for the storage of city- or state-owned road machinery, building materials, and other bulky commodities.

Another aspect of management is preparing the land for a future use. Much land acquired by tax reversion, for example, will have cloudy title. The city agency having custody of this land during the waiting period could put through quiet-title actions against whole blocks of these parcels at one time. If the property is to be sold back into private use, it might insure the titles so cleared. In many cases outlying land will have been cut up into parcels, and the city may want either to re-plat this land, or turn it back into acreage. Where streets have been cut through, and sidewalks laid, it may be desirable to tear out these useless improvements (if they are useless) so that the land will once again be suitable for agricultural or recreational use. Blighted areas or slums, acquired either for slum clearance or for other uses, must be razed; and in these cases the managing agency could act as sponsor for WPA projects to demolish the buildings, salvaging what materials it could. Cellar holes may be in need of filling, swampy areas may need draining, rough land may need grading or terracing: such reconditioning or rehabilitation operations are properly part of the management of the property before it is dedicated to its ultimate use.

Grants in Aid

Where the Federal or State Governments offer grants in aid of city land programs, these grants should be guided by the principles outlined

above. Since State or Federal participation is to be residual, the grants too should be residual. Cash grants, that is, should be made only after the city has called on every other resource. If the higher Government employs powers not available to the city to acquire land and turn it over to the city, it should be done on the basis of a demonstrable State or national interest involved. The resources of the state or federal levels of government, in short, should not be called on to pull the main load in urban land programs, but merely to lend a shoulder to the wheel.

If a grant includes money for land acquisition, this portion of the grant should be earmarked, and its granting be made conditional upon the observance of certain minimum administrative standards in point of appraisal, impartiality in negotiation, establishment of title, and subsequent management of the land. If there exists in the city some central machinery for the acquisition of land, the grant may require that all land bought with Federal or State funds be bought through or by the central city land purchasing office. Similarly, grants for land programs as a whole (whether land acquisition is involved or not) might be contingent on the existence of a master plan, or planning machinery for the coordination of land planning programs. The FHA now refuses to insure loans in a neighborhood not adequately protected by a city plan or a zoning ordinance, for example. In the future the Public Roads Administration, say, might refuse to make grants for State highway development unless they were planned in conjunction with other land use developments of the area, unless the roadsides were adequately protected against strip development, and unless the land was bought (and title insured) through the central land office of the city; the USHA might refuse to approve

loans for low cost housing unless cheap sites near places of employment could be provided; or the RFC might refuse to refinance a city's special debenture bonds unless tax delinquency was cleaned up and tax abandoned properties were foreclosed. In many cases, the State and Federal governments do not need to make new subventions and loans to influence city policy: they need merely look more carefully into the potentialities of existing grants.

Administrative Machinery

There are suggested in this section three possible forms of administrative organization for carrying out land acquisition programs. Each has its merits and defects, each is adapted to different local conditions, and in any specific case the city adopting a land acquisition program must determine the most suitable form of organization for its purposes.

The simplest form of organization, adapted to cities with a high degree of administrative maturity, is the establishment of a land acquisition planning board. Where a planning commission already exists, of course, the functions of land acquisition planning would be assumed by the planning commission. Where there is no planning commission, the land board might operate as a part of the budget bureau, or as an independent board under the mayor or manager. The function of the board would be to do the advance planning of land acquisition outlined above in the section on "Planning Procedure". It would collect from the city departments their estimates of future land needs, relate these to the city plan (if any), reconcile any conflicts between the programs of different agencies, and compile these estimates into a basic inventory of the city's land needs.

In addition to this, it should collect data on the land acquisition plans of special authorities, ad hoc districts, and overlapping levels of government, add these to its master plan, and then attempt to outline desirable land reserves or public areas not now covered by any existing agencies — greenbelts, for example, or forest preserves.

When the map of land needs had been prepared, the land board could then constitute itself a committee on ways and means, and in consultation with the city solicitor, tax collector, assessors, and others, attempt to outline a plan for the acquisition of as much land as possible. When the rough outline for the acquisition of the land had been completed, it should go on file with the inventory of land needs as an official policy document of the city, and should guide city agencies in the future. Thus, when a purchase area has been set up -- for a housing project downtown, park in the suburbs, or a greenbelt in the outskirts — the city should hold on to every piece of land within the area that comes into public hands, whether by tax reversion, purchase, gift, or some other method.

The drawback of this advisory-planning type of administrative machinery is that it is excessively weak. Such advisory groups rarely have the expert personnel to make themselves useful to action agencies; as outlined above, the land board would certainly not have powers to acquire, hold, and manage public lands until needed; such groups find it hard to keep their programs up to date; and the action agencies lose interest very shortly because they find the planning agency long on talk but short on action and cash.

An improvement over this type of organization would be the establishment of a city Land Office, or real estate buying corporation. This corporation might be attached to some existing agency of the city, or it might be independent. It should not be a part of any fiscal or physical planning agency, although it would naturally have the closest relationships with such agencies in planning and programming its acquisitions. The Land Office here suggested would be the sole land acquiring agency of the city. Under this type of organization, the external planning of land acquisition -- that is, the broad policy determinations of how much land to buy, for what purposes, where, in relation to the city plan or the city's needs -- would still be exercised by the city planning commission, if there is one, or by city officials sitting in conference with the head of the Land Office. The internal planning of land acquisitions -- the year-to-year programming, the administrative determinations as to when to buy, what parcels to acquire first, and so on -- would be handled by the Land Office, consulting as much as necessary with the city's fiscal and legal officials.

The staffing of the Land Office must remain a matter for local decision. It may be possible to borrow or assign all the necessary personnel from other agencies. It may be possible for other departments to perform for the Land Office such functions as appraisal or conducting litigation. On the other hand, it may be advisable to give the Land Office its own staff of appraisers, negotiators, planners, lawyers, etc.

As to finance, it is the opinion of the Committee that the Land Office should be a self-supporting corporation. Land specifically requested by a department, that is, should be paid for out of that department's

funds, and the cost of acquisition added to the cost of land when it is transferred to the department. General operations, in which no department has an immediate concern, such as buying in and clearing title to old subdivisions, should be conducted with a general operating or revolving fund; and when the land acquired by these operations is turned over to some department for management, the cost at which the land is transferred should be sufficient to replenish the general operating fund. In other words, the Land Office will be self-sustaining in the long run: where it is acting specifically as the purchasing agent for an action agency, it is immediately reimbursed; and where it is acting generally, in the name of the city, in advance buying, it is reimbursed at the time that some public use is found for the land.

The great advantage of the Land Office over such an agency as the Land Acquisition Board suggested above is that it has corporate entity: it has power to spend money, to act instead of merely to urge others to act. It automatically centralizes land acquisitions; its operations may be timed so as to take advantage of market conditions; it may set up its purchase areas, its proposed greenbelts or land reserves, and acquire them slowly; it may employ such techniques as exchange to greater advantage then individual departments buying each on their own account; and since it has a number of acquisitions going on at the same time, for different purposes, in different parts of the city, it is able to deal more effectively with Federal and State credit institutions, private banks or mortgagors, potential donors of land, and is in a much stronger position in the open market. A single department, assembling one site for a single purpose, must pay what it is asked; a large Land Office, buying here and there for various uses over a period, can bargain on more equal terms with property owners.

The success of such a Land Office would depend on the powers it could legally exercise, and the size of the funds at its disposal. In general, the greater its corporate powers and the larger its operations, the greater the economies it could show. There now exist in several cities Real Estate Departments or Real Estate Agents* or similar offices, but they have been set up principally to dispose of lands that the city has inadvertently acquired (i.e. tax reverted parcels) and not to take the lead in a vigorous program of land acquisition for broad public purposes. As pointed out elsewhere in this report, the real key to success in the public acquisition of urban land lies in a broadening of municipal powers to acquire land and of the concept of "public purpose", not in setting up new city departments. It should also be emphasized that these powers, and the machinery to exercise them, are double edged weapons: they can be wielded by dishonest manipulators and pressure groups as easily as they can by public spirited officials. Like proportional representation, the city manager plan, central civil service, or any other administrative reform, centralized land acquisition is not an automatic solution for anything: it is merely a device to make public action more responsive to the public interest.

One defect of the city Land Office is the fact that it is only a city corporation. This means that in a metropolitan area, where several cities are operating, there would be no clearance of land acquisition programs unless special machinery were devised; there would be little possibility of joint use of certain public areas by several cities; and

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* Portland, Oregon; Milwaukee, Wisconsin; Syracuse, N. Y.; Polk County, Iowa (Des Moines); Asheville, N. C.; and other cities.

less possibility of continuous planning across several jurisdictions. It also means that there is no mechanism for coordinating the land acquisitions (and the land policy) of the state and federal governments with those of the city. Coordination of all Federal grant in aid policies, for example, to encourage the development of a rational and locally-acceptable pattern of urban land use would require not only a planning and coordinating body at the city level, but another at the Federal level; and a third body at the State level would be needed to coordinate state equalization and subvention policies. This would probably be followed by a coordinating board to coordinate the coordinators, and all action would bog down in a morass of carbon copies, typewriter ribbon, memoranda of understanding, and inter-agency conferences.

The solution to this problem might be the establishment of a joint Federal-State-local real estate buying corporation.

This corporation would have as its jurisdiction a metropolitan area, and within its jurisdiction would serve as the purchasing agency for all land acquired by public bodies -- Federal departments, state departments, special authorities, counties, cities, and ad hoc districts -- just as the Land Office suggested above would serve an individual city. This corporation, of course, would have to be established by joint State and Federal legislative action; and it would probably be necessary to make the participation of municipal corporations optional rather than compulsory. In either case, however, the membership of the governing body should represent the interests of all agencies acquiring land through the

corporation, and of all State or Federal agencies whose loans, grants, or subventions influence the patterns of urban land use. It might include, for example, a member from the Federal Loan Agency (representing FHA, HOLC, and FDIC), a member from the Federal Works Agency (representing USHA, PWA, Public Roads and Public Buildings); some one to represent the interests of the State agencies acquiring land or granting money for such purposes as public health, education, and tax equalization; a member from any metropolitan district and such public bodies as port authorities, improvement or conservancy districts, and housing authorities; and representatives of the several cities and counties. In some of the larger metropolitan areas this might become a little unwieldy; but then our large metropolitan districts themselves are unwieldy: it is not expected that complicated problems will have simple solutions.

The Corporation should have the power to buy, sell, own, manage, condemn, and lease land for any purpose of either State or Federal government; it could also accept and make gifts of land; it could borrow or lend money on the security of land: it would partake, in short, of the nature of all three levels of government, would act in their joint name for whatever purposes their respective charters and constitutions permitted, and would be truly a "public" body, representing the public via three separate governments. Land owned by the corporation would be public land, not State or municipal land. Operations of the Corporation would be carried on in the name of the public, and not any particular level of government.

The precise legal form of corporate organization, the method of providing the corporation with funds, and the staffing of the corporation are matters on which the Committee would like to see further study. There are a number of possible forms of organization, such as a trust, a joint stock corporation owned by the several member agencies, or an entirely proprietary corporation. Money could be raised by borrowing direct from the public, borrowing from an agency like the RFC, or borrowing from the member agencies; member agencies could subscribe to the stock of the corporation, could put up land for part of the value, or could put up mortgages on land, and such contributions would be made in exchange for stock or bonds; bonds might be debentures specifically secured by property, general debentures, or "full faith and credit" bonds guaranteed by the State or Federal governments. The staff, like the staff of the city Land Office suggested above, might be drawn from existing agencies, or it might be hired fresh. In some cases, functions of the Corporation could be performed for it by member agencies; in others, the operations of the Corporation would be large enough to justify independent staffs.

However staffed and financed, the Corporation should be independent of funds from member agencies for current operations by charging these costs to acquisitions made. No one or two members should be in a position to spike its guns by withholding funds. Like the Land Office suggested above, the Corporation should have adequate operating funds, replenished whenever it turns land over to a member agency. Adequate control over the operations of the agency can be maintained through membership on the

governing body; and in the last analysis the Corporation can be abolished by either the State or Federal governments, while municipal corporations can withdraw from membership.

In its operations, the Corporation would resemble the Land Office except that it would operate over a whole metropolitan region, and in behalf of all public bodies acquiring land or planning land use in the region. It would serve, through the deliberations of its governing body, to reconcile and coordinate the policies of all member agencies. In effect, the member agencies would make decisions as to desirable land use objectives: these decisions might be limited to the establishment of a circumferential parkway, or they might be so ambitious as to contemplate a wholesale decentralization of certain urban functions to the peripheries of the area: but to whatever extent these decisions were reflected in land acquisition, they would of necessity be coordinated before the Corporation had a land acquisition program upon which it could act. Even though membership in the Corporation were not compulsory, it would be to the advantage of all units of government to participate: land costs would be considerably lower, partly because of grants in aid which would be forthcoming if land were acquired through the Corporation, partly because the corporation could enter an entirely different realm of land acquisition, one not open to any individual city, in the reservation of open spaces, in the clearing of title to lands now in no ownership, in the insuring of title, in acquiring tax delinquent lands, etc. It would be difficult, again, for any city to conclude agreements with all State or Federal agencies having the power or funds to acquire land for municipal purposes; yet through

the Corporation, all the distressed properties of the HOLC, lands taken over by the FDIC from closed banks, tax delinquent lands foreclosed by the State, sites of Federal buildings about to be abandoned, and many other types of property, would automatically pass through the hands of an agency which knew what lands the city wanted (i.e. the Corporation itself). The scale and scope of the independent operations of such a Corporation would also be entirely out of the reach of an individual city or county, yet by membership in the Corporation it could participate in the benefits.

The danger to watch for in establishing such a Corporation is that the Corporation, with skilled personnel and a comprehensive view of land use patterns of the whole metropolitan region, might become too influential in determining policy. In attempting to give the fullest effect to local desires by setting up a Corporation powerful enough to carry them out, we may be creating a tool more powerful than the workman. Whether this danger materializes or not depends on the care with which the member agencies select the personnel and the steering group of their corporation, and the amount of knowledge and skill and understanding they themselves bring to the conference table.

These, then, are three possibilities for the administrative machinery of land acquisition: simple coordination of advance plans through a Land Board; a City Land Office to act as central purchasing agency in the acquisition of lands after the plans have been made; and a joint Federal-State-local real estate Corporation to acquire the land necessary for all

public purposes, and to coordinate the policy of all agencies affecting the land use and land development in the metropolitan area. Whatever the machinery adopted in a specific area, it should be subservient to the general principles outlined at the beginning of this chapter. Three of those principles bear repetition, for they cannot be too strongly emphasized: (1) all land acquisition should be related to an orderly and comprehensive plan or urban development; (2) make use of every possible technique to acquire land at minimum cost; (3) obtain the maximum social return from the land once in public ownership by conscientious management.

US National Resources Planning Board.
Land acquisition in a national land policy.

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