THE ASSESSOR AND URBAN LAND USE CHANGE

by

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In a recent report based on the most current data available, the Regional Plan Association found that the tri-state metropolitan area comprising twenty-six counties in New York, New Jersey and Connecticut is no longer growing. Revising its projections for both 1980 as well as more futuristic predictions for the year 2,000 and beyond, RPA found that our country's largest urban area will have, at best, slightly more than its current population in the coming period and of that an increasing proportion will be well outside the urban core and the nearby suburban fringe. Before anyone hails this early advent of no growth as an appropriate coming of the millennium, I should recall for you the impassioned pleading of a vice-president of RPA at the recent conference of ACIR in Washington for new attention to problems of metropolitan areas that can no longer rely on growth for economic development. Indeed, no growth may well be at least as disastrous as too much too soon.

There is every reason to believe that most metropolitan areas, particularly those centered in the older cities of the Northeast, are facing comparable futures, with less building for fewer people as well as a thinning of the density in the urban core areas. The implications of these trends for changing land use and consequently the entire value system on which assessment is often based, warrant some hard new thinking.

When Americans think of the land we think of our open spaces, places of natural value and beauty environmentalists stuggle to preserve, substantial tracts developers seek for profi or even some rational accommodation of the two needs. But the land that provides both the greatest return as well as some of our newer problems is that which has already been developed serviced by intricate and expensive urban infrastructures and, with all the revenue sharing, state aid, and other external sources, still the most important revenue source of local government by far. It is this land whose use is changing more dynamically as a result not only of our present economic difficulties and the future of no growth, but the recent past of inflation as well as expansion.

Let me cite a few examples of urban land use changes and our assumptions about them. You all know how most of our cities grew from their waterfronts. Ocean, river, lake, these were the connections to the world, the very reason for urbanization. The commercial values of the waterfront reigned supreme or nearly so, with some cities taking special pains to preserve such areas for these activities alone. The decline in shipping by water and the changes within that transport mode such as containerization and supertankers, now dictate new land uses. What was once prized for profit and ready access may now be valued for aesthetics and isolation. The new and expensive apartments of Waterside, the attractive new towers on the East River at Thirtieth Street in Manhattan, are advertised for their view and the security and privacy afforded by the location. Indeed, the entire perimeter of the island may, in the future, be ringed by expensive apartments with a few tokens of the past glories of the nation's greatest port like the South Street Seaport Restoration in Lower Manhattan, and a new but possibly vacant passenger terminal on the Hudson.

Similarly, in the interior acres of downtown, loft, warehouse and storage buildings, many of them built in the great Cast Iron period of the past century, are converted to residential use by artists and others seeking large, well-ventilated spaces. It is important to note that the changing uses in these areas were almost always outside the law and only now, when the phenomenon is too large to ignore, has officialdom taken note and even in some instances, sought to encourage it. On a different scale, the private renewal of some of the oldest sections of Brooklyn in what has become known as the "brownstone movement" has transformed whole neighborhoods from seedy deterioration. Only now when prices for such properties preclude all but about five percent of the residential market, has the city begun congratulating itself on its viability.

Nor are the changes limited to the conversion of unused commercial space to residential. The South Bronx, whose middle class past is still visible in the shells of substantial buildings still standing in the slum debris, has recently been offered by the city to an Italian investor, tax free, who promises to put up prefabricated factories. And in the outer reaches of suburban Staten Island, residents are protesting the advent of a city-approved amusement park. Throughout the city, even in this period of recession, no growth and construction slump, land use changes are planned, contemplated and even made real. Yet these new realities are scarcely reflected in the most important process through which the municipality deals with itself and the assessment of its own land.

The problem is, of course, that we don't typically assess the land of New York or most other cities. What we tend to look at is a total parcel, especially the nature and quality of the improvement on it. While the laws of most jurisdictions require a separate assessment for the land portion, the practice of most jurisdictions just as surely precludes separate assessment of the land. All sorts of professional and even learned rationales have been offered for the "indivisibility of the parcel" or the impossibility of separate values. I think in the last decade, however, especially with the advent of the computer and the application of multiple regression analysis and the by now routine practice in many jurisdictions, both small and large of land value mapping on an annual basis, we can afford to put this argument aside. Suffice to agree that urban land itself has a value and it can be at least as precise ascertained as the value of any improvement on it. The question remains however, as to wheth the value relates to the current use or to some potential highest and best use. Let me say right off that land assessments based on current use will result in a pale reflection of improvement values with the current use, however inappropriate by any economic or real estat standards, dictating the major components of the assessor's valuation task. At the other end of the scale let me say that I think it is time we all buried that classical but hopelessly biased notion of highest and best use, and lay to rest along with it that entire hierarchy of value which places vacant land at the bottom and the new office tower at the very top. The bias implicit in this value system runs smack up against a newer and yet older set of values that suggest bigger is not always better, density not always prized over amenity and that eve potential economic return need not be the ultimate arbiter of urban land use.

Let me state the case of the currently fashionable controversy in New York City--and it must be fashionable since Jackie Kennedy has entered the fray--the case of Grand Central Stat Like so many rail terminals in cities across the country that seem to be suffering from some the obsolescence of that entire industry, Grand Central is exactly that, a very grand and was ful old building in a very central location. While it is the magnificence of the architecture that stirs the culture vultures towards a landmarks designation denied so far by the court, i may well be the centrality of the location that will require its preservation. Built to attra the commuters pouring out of the station itself, the office buildings that surround Grand Cen tral along Forty-second Street, Lexington and Madison Avenues, all attest to the need for at least one pedestrian island in their midst. If the Grand Concourse of Grand Central did not exist with its underground passages to major buildings in all directions, as well as commuter and rapid transit facilities, its equivalent might have to be built all over again, perhaps less grandly but at least as functionally. For it would be impossible to work or visit the area with any degree of comfort without the breathing and walking space afforded by the termina to all of the denser developments around it. Indeed, such fears were even expressed at the advent of the Pan Am Building, whose octagonal bulk, while it offended those who treasured the old beaux arts view looking south down Park Avenue, successfully accommodated itself and even strengthened the terminal's function with broad, fast escalators to the Concourse. A recent survey of people who occupy the building, in a study done down at Lehigh University on high-rise development, indicates that Pan Am works quite well indeed because it relates to Grand Central functionally, if not aesthetically. And so it may very well turn out that the highest, best land use for Grand Central is precisely what it is right now, a relatively open area for the buildings around it and the people who use them. Not that there is no more room for better buildings in the area. Once the Penn Central is forced to liquidate its own land empire one might fairly predict that the old, and deteriorated Commodore, Roosevelt and Biltmore Hotels will make way for more suitable improvements depending on the economy and market need. Whatever and whenever these buildings appear they will benefit from the existence of a Grand Central or its equivalent in spatial function, which may be precisely the way landmarks ought to be preserved.

Cities don't work very well as museums. The problem with Venice is not only that it is sinking in its lagoon, but that it no longer really functions as a city. The glory of Cologne or Paris and certainly New York, is that they do. Functioning buildings need not necessarily pay their way, but they must be wanted for something by someone, and unlike true love they cannot just be wanted for themselves alone. Despite a decade of frantic lobbying by Mrs. Huxtable and her cohorts about the landmark quality of the Cast Iron buildings of Lower Manhattan, they might all have disappeared if some artists didn't find they were worth living and working Despite all the charms of a row of gaslit Brooklyn brownstones, many more would be gone if some folks hadn't discovered at considerable cost and effort how to convert these multi-storied railroad flats into fashionable dwellings. The great U.S. Customs House at the foot of Manhattan overlooking The Battery will survive because someone in the federal or city government or the private sector will want that space for something. A couple of old mansions opposite the Metropolitan Museum on Fifth Avenue will not survive because no one wants that space for anything but a new, expensive apartment house. It would be interesting to see, in fact, how the assessments on that Fifth Avenue location may rise along with its new improvement and it may be still more valuable to learn just how much the selling price of that corner was inflated by the failure to raise that land assessment substantially when the buildings provided little, if any income. Is it just possible that a less outrageous land acquisition cost could make such a parcel attractive for less than the most expensive apartments in town? Such as, say, some new office and study spaces for the museum to keep it from gobbling up still more of Central Park for its new Egyptian Temple and other valuable additions?

But before we indulge in too much of our own speculations let's look at the way we actually do assess land whose use is clearly undergoing change. Along the East Riverfront of Queens there are vacant parcels overlooking the poshest residential enclaves of Manhattan's East Side, but adjoining the heaviest industrial warehouse and trucking centers of the city. Perhaps I am not alone in thinking how much nicer it might be to live with a view of Sutton Place, than to live on Sutton Place with a view of industrial Long Island City. I know I am not alone because a couple of years ago, one of our major financial institutions was busy buying whole tracts of this underused waterfront at up to twenty dollars per square foot. At that time typical assessments in this area were at one dollar per square foot reflecting the rather poor market for industrial waterfront in the heart of the city. Of course the area is zoned for manufacturing, of course there are no new high-rise developments there, of course it is impossible to predict when and what kind of developments will take place in an area so long neglected and underutilized; but we need not be in the business of predicting or projecting new uses for urban land. Whether my dream of high-rise apartments on the Queens side of Sutton Place or another scheme of a platform over the railroad yards supporting an entire residential community, or the reality of a new town equivalent in the middle of the East River formally Welfare Island will shape the future of this area, should make little difference as long as the area has a future. And we know this from the fact that someone was willing to part with money to own this piece of urban land and that amount was many, many times more than we as city officials assessed as its value.

Holding out for the highest and best use can be a luxury for a landowner unless he is subsidized. And it is the assessor who makes that subsidy available by neglecting to consult the market regularly, currently and comparatively when looking at land. This notion of land being "ripe" for a certain kind of development, an almost sensory quality arrogated to itself by the real estate industry the way a housewife picks a melon, needs a more critical look. Any property can be ripe for something, even urban land on which nobody wants to build might be valuable for vegetables or if the neighborhood market warrants, marijuana. The serious point is that every parcel has a value on the basis of a possible as well as current use, or as one of my assessor friends suggested when confronted by a municipal official with the problem of land nobody wants, "If nobody wants it, why don't you give it to me?"

The changing uses of course, have almost always been thought of as newer and more profitable developments. That might have been the case, but it certainly no longer is. The self-service parking lot where the old Madison Square Garden once stood, the one story row of shop fronting the hole in the ground of Third Avenue and the upper Forties where a new office building will not go up as long as thirty million square feet of office space is still vacant the acres of rubble that were once working class neighborhoods, and the storefront churches that replaced real stores, all represent changes that must be reflected in lower values. We may no longer protest that zoning, tradition, geography and access make for a valuable site when the people and the market say otherwise. Similarly, we can no longer ignore the reuse and re-emergence of sites and areas thought to be "past their prime". What does it mean anymore when we say as we used to when a neighborhood is "played out?" Does it mean that this is a place people will choose not to go as a matter of choice? Does it mean that the highest rents will not be paid? Or does it mean simply that there are different people who may seek out these places for different purposes than they were put to in the past? We must be extreme careful even when and if we can overcome racial and ethnic prejudice, to keep vestigial bias from our own value systems. Which is the more valuable real estate, a string of empty boutiqu on a high rent street or a busy local shopping area in an ethnic neighborhood? Aha, you may say, back to the income theory of assessment. But no, I am not suggesting that values change automatically with vacancy signs. What I am asking for is a closer look at the market to find out what is happening to the older values and what changes are taking place in the newer ones, or if we all have been mistakenly too high or too low based on a traditional notion or a symbolic value that simply does not square with reality. An empty office building, a mostly vacant luxury condominium, a padlocked store may not be slums in themselves, they may be the temporary phenomena of a hopefully short economic depression. But neither are they necessarily the highest and best use of their urban land. A more modest development at lower rents, acquired perhaps at lower prices, might be the more appropriate use.

Smaller indeed, may well be better, as some Brooklyn property owners have discovered in the last decade by putting up legal and illegal three-family houses on just about every vacant lot in any habitable area of the borough. Huddled between the stately pre-war residential apartments of Ocean and Bay Parkways we see the new row houses of the seventies with fire escapes transformed into patios, hardly the highest or best use of these imposing locations dominated by six, eight and ten stories with elevators. But some of those older rent controlled apartments go begging while the new row houses are snatched up at more than six figure prices. Is this the trend? Shall we tear down Fifth Avenue and put back the old one-family mansions? No more likely than desirable. But our hierarchy of values, our traditional prejudice should be shaken, for that is the only way we can be prepared for change and deal with it as something other than catastrophe.

The way the assessor deals with change, not only in use but in occupancy of a neighborhood as well as a specific property, can have an important impact on the shape of the city in the future as well as the state of its current fiscal health. In its study of property taxes and urban blight for HUD, the Arthur D. Little Company surveyed ten major cities dividing each into four kinds of neighborhoods identified as stable, upward transitional, downward transitional and blighted. While some urban observers have discounted the findings of this study because of its thin data base and perhaps too narrow a focus, there has been little dispute with one basic finding that to quote: "the failure to reassess properties downward in line with depreciating capital values, undermines the ability of current owner-occupants to retain ownership, thereby placing considerable financial pressure on the areas' most stable households." Applied to transitional downward areas, this finding shows how assessment accelerates that negative transition. On the other hand, with regard to upward transitional neighborhoods, only Philadelphia is found to routinely reassess new improvements in neighborhoods moving up. And, consequently, to quote the study again: "poorer neighborhoods are being forced to subsidize heavily, through tax payments, the tax concessions granted to these areas." There are other findings that seem to say that the propert tax does not count for very much as an incentive for development in a stable area or as a disincentive to investment in a blighted area. One might fairly conclude that where the change has already occurred or where no change is currently foreseen, the assessment impact is marginal at most. It is where the changes are in the process of occurring that the impact will be the greatest.

The problem with the Little study and the problem that the assessor has a hard time resolving, is the very one of identification. Except for the relatively small instances of absolute stability, upward and downward transition are likely to occur within a neighborhood and sometimes, in a period of rapid change of occupancy and use, within a single block. Private renewal may be observed at one end of a street in which other properties are deterio ating and sometimes even abandoned. Is the place getting better or worse? Is this a case of over-investment in the location or underassessment of a location value?

The West Side of Manhattan offers many striking examples in which blocks off Central Park West retain high values, and off Columbus and Amsterdam Avenues one might find every ki of urban living from the height of elegance to West Eighty-first Street, which for years has been revisited by the New York Times as one of the worst streets in New York. Or to jump to another kind of neighborhood, the picturesque waterfront of Sheepshead Bay in Brooklyn where newly vacant commercial and residential parcels abut both frame bungalow relics and upper middle class apartment co-ops. Clearly, neither the West Side nor Sheepshead Bay may be dealt with safely as a single neighborhood entity. Yet, there is one objective standard that can be applied to both and one which allows reality to overcome the myth of neighborhoo There is a market for land both on the West Side and Sheepshead Bay just as there is for the industrial waterfront of Queens, the downtown loft section and yes, even the rubble of Brownsville and the South Bronx. There is a market for land in old and seemingly stagnant Jersey City, where I have been looking at the tax rolls lately and I daresay there is a market at some level and for some use in every jurisdiction. Assessors can and do pay close attention to the market for indications of site values. In midtown Manhattan where it is commonplace (or at least was during the recent building boom of the sixties) to replace sound old structures for new office towers, New York City assessors routinely arrive at site values very close to sales prices plus the costs of demolition. It is interesting to note that some of these assessors who can arrive at a Fifth or Park Avenue assessment pretty near the square or front footage dollar value, will also claim it is impossible to do so in Forest Hills or Flatbush or Riverdale. The relatively close assessment of the highest value commercial center of the metropolitan area, while it demonstrates the possibility of doing the job, also points up the dangers of doing the job inequitably by concentrating close assessment in one area or in one classification. As long as inflation and expansion allowed commercial landlords to pass along assessment and tax increases to office tenants, there was no outcry. And the largest of such property owners always had the resources, legal financial and political to utilize an appellate process in their own behalf. To refer again to that Arthur D. Little study, they found in their ten cities, which did not include New York, that the tax appeal process is possibly the most regressive feature of the propert tax in that the large and wealthy property owner can best use it to his advantage.

Even city officialdom in the grand comprehensive PLAN FOR NEW YORK, referred to the Manhattan business center as the engine that makes the entire city, and perhaps a great deal of the metropolitan area, run. Now that the engine is stalled, with one new midtown office building in bankruptcy, several others entirely vacant, older buildings substantially in arears, should we allow the giddy market of the sixties to fix values at the highest, if not the best, level? Or should we have allowed the depressed values of the thirties to prevail in much of the rest of the city for over forty years when Manhattan was able to support it?

Just because a market is not extensive or volatile does not mean that it cannot provide current value indicators. Indeed, the application of sound factor analysis or multiple regression is simplified when sales and other market data appear in less complicated transactions and more orderly intervals. The fact that we have been able to use market criteria in the most difficult circumstances is certainly no argument for ignoring them in the least complicated.

One possible consequence of better assessment using current market data for an entire city would be a start on the long needed reversal of urban policy and practice in which the central city has borne the brunt of both the service load and the tax base. If in fact the true wealth of a jurisdiction has in fact moved closer to its perimeter than to its center, we had all better stop bemoaning that fact and start to deal with it. When some of the most luxurious apartments are built on a former golf course at the Nassau border, or up in Riverdale, at the Westchester border; when the major new retail centers are built to serve the new middle class communities of Southern Brooklyn and the post-war apartment houses along Queens Boulevard, it is long past the time to recognize that new location values are being created. Whether these new values can entirely replace those lost in the central areas, may well decide the fiscal fate of our cities. But if we ignore these fundamental changes in economic geography, or merely decry them, we may be sealing that fate already.

Downtown may grow or decline, or do both at the very same time. The same may be true for every part of every city including, less dramatically, what we regard as our stable areas. Urban land use changes must be seen in a context broader than a zoning ordinance which supposedly regulates manufacturing, commercial and residential areas. It is a well-known fact that few urban districts are built to their zoning maximum. It is perhaps not as well-known that the variance to and exemption from the zoning requirement have as much impact on what gets built as zoning itself. In New York City, the Planning Commission has now come to recognize variance as a way of life, with the designation of whole areas as special zoning districts in which developers can negotiate for greater densities by offering desired amenities. I have some problems with this whole notion of decreeing at any given point what society demands from a private development. A decade ago the city was giving away more office space on top for the sake of open plazas at the base. Now we find that plazas are less than useful and so we want Fifth Avenue maintained to the building line with stores at every street level. But buildings, however subject to fashion, are not hemlines to be raised or lowered every season. In fact, I note that in the liberated present, skirts can be any length women choose or dispensed with altogether in favor of pants. So there is a problem with imposing tastes. Standards, limitations and the rights of others are the legitimate concern of municipal land use regulation. But let's leave fashion to the marketplace.

Yet the flexibility of city planning, with all of the dangers of excessive interference in the development process, has a healthier, more realistic side to it as well. We are coming to recognize that the strict segregation of uses is not necessary, nor even desirable. What we used to regard as the "non-conforming use" may need protection rather than elimination. A working class community in Northern Brooklyn fought hard and won the right to live with an expanding factory in its midst. Saving both jobs and homes turned out to be expensive, but probably less than the loss of either. The multi-use building combining stores, offices and apartments, pioneered on Chicago's lakefront, may now help other downtowns stay alive after dark.

Homogeneous communities continue to resist use changes that threaten an established and satisfactory way of life. This is as true of the urban community as the suburban jurisdiction which maintains its homogeneity through exclusionary zoning. Yet changes in value do occur, in both directions. Communities that price themselves out of the market may find it increasingly difficult to attract the people who will support the services they have come to demand. Some of our nearer suburbs are beginning to learn this bitter lesson through the paradoxical emptying of schoolrooms and increases in the tax rate. On the other hand, some changes must be resisted by the city as well as the community to preserve such values as exist and cannot be replaced. We will no longer tolerate the mass destruction of neighborhoods by highways. We will no longer permit institutional expansion, however desirable, unrelated to adjoining occupancies. We have come to understand the interdependence of urban life. We have come to learn that growth by itself is not necessarily good and that change is not necessarily evil. What we have not yet learned is how to translate this growing social and political flexibility regarding urban land use into those official actions which reflect it, rather than fight it.

Assessors professionally often protest that they do not and do not wish to make policy. But assessment practice has policy consequences whether assessors like them or not. An assessment practice that recognizes changes in urban land use as they occur, as indicated in the market, as observed in the way people live, work, travel, can be as vital to the planning process as it is central to the fiscal process. A healthy contribution to urban policy-making rather than a mechanical response to it is clearly in order.