

Who reaps windfall from the land?



● Sydney Harbour Bridge, partly financed by a betterment tax.

When a state boosts values

THE ARTICLE under the heading "Who should benefit when land value is increased by government action?" in the American *Real Estate Law Journal*, by Professor of Urban Planning Jerome G. Rose, acknowledges that legal scholars have long been concerned that landowners may either reap a windfall from an increase in land value or have a substantial part of the value "wiped out" by governmental action.

In a recent decision of the New Jersey Supreme Court (*Nash v. Board of Adjustment*) a landowner was permitted to reap the benefit of the increased value ("betterment") of his land resulting from the court's granting of conditional variance to permit the use of an undersized lot. The condition in such cases is whether adjoining landowners offer to buy the property for its fair market

values

By EDGAR BUCK

value and the case had to do with the ascertainment of "fair market value".

Mr. Justice O'Hearn, who dissented, was aware that the case involved an issue with greater historical and conceptual significance than the narrow and technical questions addressed to the court.

PLANNING Law in Britain and elsewhere is sometimes regarded as the source of the idea of "betterment", which is a value not resulting

from the effort of the landowner but by government action under the planning law. But the word and the idea were used in a wider sense long ago. In 1871 Henry George mentioned them in his 28-page statement "Our Land and Land Policy".

This, of course, was before there was any thought of town and country planning. Indeed, it is often forgotten that the prime purpose of the British Town and Country Planning Act 1947 was to collect for public purposes the unearned income which had been going to landowners, as the need of people for land provoked development.

Britons were introduced to the idea in 1909, when the government proposed an Increment Value Duty of 20% of any increase in value after

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Fairer benefits from betterment

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30th April 1909, to be paid whenever land was sold, and also (subject to exceptions) a halfpenny in the £ on the value of developed land.

Later, a more fundamental measure reached the Statute Book by means of the Finance Act 1931, under which there was to be a levy of one penny in the £ on the capital value of all land, excluding the value of buildings and other improvements.

THE EFFORTS to collect publicly created values under the legislation of 1909, 1931 and 1947 have all been rendered fruitless by repeal. Sadly the great truths enunciated by Henry George in his *Progress and Poverty*¹ have become masked and befuddled by the planning legislation.

This arose especially from the fact that this legislation made the levies under it payable *at the time of development*. Consequently, land was held out of use or under-used by the owners in the near certainty of increase in value and the hope of repeal on change of government. The most recent of the charges finally abolished was called a Development Levy. This abolition was predictable² and has now left landowners taking all the benefit of land values created by public action.

There is now no charge for betterment under British planning law, but a deduction from compensation for compulsory acquisition is sometimes made where appropriate. For example motorways have been constructed at enormous public expense, making the land at the sides and both ends more valuable. The benefit goes, unearned, to the landowners. Consequently, in a sense, our people pay for their motorways twice.

There are notable instances where betterment by government action in other parts of the world has helped pay for the public improvement. Examples are:³

- Sydney Harbour Bridge (1924/32). The greatest steel arch bridge in the world was in part financed by a betterment tax on the increased land value created by the bridge.
- Asswan Dam which supplies the Nile Valley was financed by an

increase of £0.5 in the land tax over a very large area. The cost of the reservoir in 1913 was £4.22m. It was said, at the time, that the total return to the Treasury would be nearly £1.25m per annum when all the water is used.

The American case and the examples refer only to values consequent on government action and expenditure, but the issues are wider and more fundamental than anything in the land planning law. In a sense that body of law is an impediment to the application of the economic remedy, because its provisions affect use, and use affects value. However, town planning is so firmly established now that the economic remedy must accommodate the impediment for practical reasons. Certainly planning would be helped by the economic remedy, and planning development plans could possibly provide practical reciprocation.



● Edgar Buck

Economic considerations go to the very root of the human condition. All things produced for human use come from two elements – land and labour. The greater the share of the produce which goes to the one, the lesser the share to the other.

The principle can be perceived in primitive as well as in sophisticated

societies. Because land is limited in supply, those who hold it against the needs of their fellows take tolls – like a private tax – which increase with the efforts and productivity of work people. This inevitably involves taking part of their wages for nothing.

The history of land tenure in Britain is sketched in *The Broken Trust*, and brilliant enlightenment comes from reading 'The Unbounded Savannah', a chapter in *Progress and Poverty*. It is not only government action and expenditure which creates and increases unearned bounties for land monopolists, but also the personal effort and ingenuity of individuals, because the benefit of their division of labour is reflected in the value of the land in the vicinity.

ALL THIS seems likely to be the "greater significance" perceived by Mr. Justice O'Hearn in the Nash case. Therefore planners and others involved should look up from their drawing boards and see the star of economic truth which, if implemented, would lead on to economic justice. Its denial condemns some of the human family to deprivation and death in a world of plenty, and in more sophisticated areas to unemployment and bewilderment in sight of technological progress achieved by labour, the like of which makes the mind boggle.

The implementation of the economic remedy would call for the taking of betterment in the wider economic sense for public purposes, and supplanting existing taxation on labour and industry.

The calculation of the betterment would be by way of valuation of all land, excluding buildings and other improvements upon it. The valuation and the tax on the resulting value would apply also to vacant and underdeveloped land. The latter would break the monopoly and lead on to all land being properly used.

REFERENCES

- ¹ Robert Schalkenbach Foundation, New York, 1979.
- ² Edgar Buck, *The Broken Trust*, p.38. London: Land and Liberty Press.
- ³ L. R. East, *The Financing of Development Works*, Melbourne University Press.