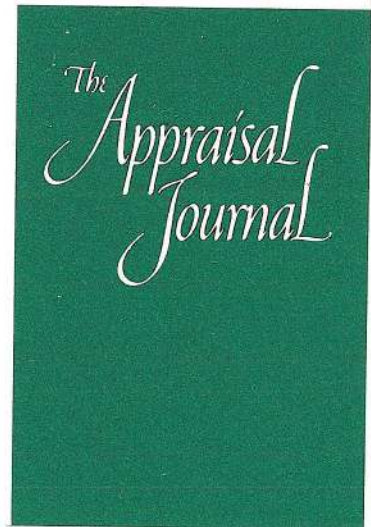


A Reprint from



*a professional quarterly
published since 1932 by the
American Institute
of Real Estate Appraisers*

The Appraisal Journal

Volume XLVI
Number 1

PUBLISHED QUARTERLY
(JANUARY/APRIL/JULY/OCTOBER)
BY THE AMERICAN INSTITUTE
OF REAL ESTATE APPRAISERS



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Limits on Development May Force Return to the Cities

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The fundamental issue facing all real property owners and those who would develop real property during the next decade is whether title to real estate confers upon the owner the right to freely develop that property, or merely the right to use it for socially acceptable purposes as determined by whatever is considered socially acceptable at that time. Until this fundamental issue has been resolved, the real value of property, which has become an object of public concern, never can be determined accurately.

SOCIAL PROPERTY

Social property is nothing more than property that has become so vested with the public interest that the property itself can be considered dedicated to public use, or some of the rights traditionally associated with property ownership can be considered limited by the public interest. Whether in fact or at law, the nominal owners of social property become, in effect, trustees of the property for the benefit, use, and enjoyment of the general public and are bound to exercise their personal rights as nominal owners on behalf of others to accomplish at least some purposes that may not necessarily be dictated by self-interest.

In the United States, largely as a result of the rush to develop the national economy during the westward expansion following the Louisiana Purchase and the conquest of California and the Southwest, the concept of social property or property vested with the public interest has been repressed rigorously in favor of a principle of absolute private ownership that would make a medieval monarch envious.

Objections have been raised to any formal legal recognition of society's interest in land, landscape, and nonrenewable resources on the grounds that the free-enterprise system and the American way-of-life are rooted in the concept that private property rights—even in land and other nonrenewable

Reprinted from May 1977, *National Real Estate Investor*, a publication of Communication Channels, Inc. Copyright 1977 by Communication Channels, Inc., 6285 Barfield Road, Atlanta 30328.

natural resources—are absolute and inviolable whatever the needs of society might be. Often overlooked is the fact that the concept of social property has been with civilization from the earliest days of Roman law, and still can be found in some form in most cultures, whether primitive or modern.

Throughout the Great Depression, as government supported the efforts of organized labor and encouraged collective bargaining, a politically powerful nonlanded working class arose and established the very real possibility that remedial social legislation might lead imperceptibly into a kind of republican socialism. This trend was reversed, however, as the federal government subsidized the development of single-family residential subdivisions after World War II and apartment-dwelling city residents became suburban homeowners.

With the decline of the residential housing market and a rethinking—even in the suburbs—of the economic need for and social desirability of multiple dwellings occupied primarily by tenants, the concept of social property becomes one that all those concerned with the development of real property must begin to consider and eventually respect.

LIMITATIONS ON PRIVATE PROPERTY

Under the national mandate to protect the environment, certain unique, national, natural resource treasures such as marshes and wetlands have become social property, which in the historical context of that term means unsuitable for development except under public supervision for the public benefit and usually only by public representatives or quasi-public entities like utility companies.

With the continuing shortages of food and fiber throughout the world, there can be little doubt that prime agricultural lands soon will be elevated to the status of social property. Although not necessarily leading to collective farming in the socialist sense, if the suggestion is implemented that the U.S. Department of Agriculture and its Canadian counterpart establish a wheat cartel similar to the OPEC oil cartel, the unencumbered transfer of conventional fee simple absolute interests in productive agricultural lands probably is going to be limited; and the development of farm lands for other than agricultural uses certainly will be precluded. There are also significant legal precedents that support this position. In addition, potentially hazardous areas such as steep slopes and floodplains also will come to be considered either social property or property on which development will be prohibited in order to protect the public health, safety, and welfare.

REAL ESTATE INVESTORS

Where does all this talk of public limitation on the use of private property leave the real estate investor? It leaves him (her) at the mercy of the real estate appraiser. And where will the standards for appraisal of social property be found? They probably will be found first in the decisions of the

courts as they struggle with rulings on each new claim of public interest in private property. It may be years before recognized standards for the appraisal of public values in private property, or more particularly the diminution in the value of private property that comes from the public interest in that property, can be established. Until then, however, wary lending institutions that must wager the money of their depositors and investors on the continued value of real property can be expected to turn away from investments secured by property whose use may be limited by the claim that it is "social property."

REAL ESTATE DEVELOPERS

In the meantime, where does this leave developers? It leaves them in the already urbanized centers of our major metropolitan areas. If any force during this generation eventually will drive real estate development back into the core cities, it probably will be the environmental movement. It is only within already developed areas that further development will be able to proceed without substantial interference in the name of environmental protection or energy conservation.

Cheap land and the availability of direct and indirect federal subsidies for single-family residential subdivision housing led most developers to ignore the established cities and major metropolitan areas in their rush to open space and quick profits in the suburbs. The private real estate investor left the redevelopment and restructuring of established cities to government bureaucracy operating in the name of urban renewal. The results of government attempts at urban renewal are well known to the financial community, the real estate profession, and the many sociology students who have found their thesis topics in the plight of our central cities.

URBAN RENEWAL AND PRIVATE ENTERPRISE

The time has come for the real estate community to seriously consider urban renewal as the proper domain of private enterprise and one of the most appropriate areas for real estate development during the remainder of this century. The rebuilding and restructuring of our cities must become an objective of private investment rather than government experiment.

The key to reinvestment by the private sector in our central cities is in the hands of appraisers, because lending institutions will provide the money necessary to redevelop our central cities based on their appraisals. It is up to appraisers to begin looking at more than the recent sales and overall condition of buildings. As more and more obstacles are placed in the path of further residential development of open space, some premium will have to be placed on the fact that the central cities are available for development at a true net cost considerably lower than what appears to be more desirable land in the suburbs. In addition, the value of government and societal services already in place must be added to central city parcels, and its cost

subtracted from suburban tracts. The net energy savings that can be realized from redeveloping existing urban neighborhoods and in many cases recycling existing building materials also must be considered. There can be *little* doubt that the environmental audit and the energy audit must become as much part of a real estate appraisal as the analysis of comparable property sales.

There can be *no* doubt that private real estate developers who jointly or cooperatively develop, redevelop, or restructure a portion of any established city to earn a reasonable return on an investment that meets a public need should have a much easier time than those unwise speculators who make further attempts to develop the remaining open spaces of the country with the attendant problems of transportation, energy conservation, and environmental protection.

An alternative form of development that rapidly is becoming financially attractive is the reorganization of existing areas of suburban sprawl about the nearest commercial, industrial, or transportation center to reduce the outer perimeter of the residential area and encourage concentration of population-intensive activities towards the center—eventually producing a viable community reasonably bounded by open space and providing the other amenities of civilized urban existence. The savings in community expense for societal services today is almost sufficient economic justification for such action by the private sector with the encouragement of government, and would be in the enlightened self-interest of government bureaucrats. Unfortunately, nothing is going to happen unless appraisers are willing to recognize the long-range value of such investment strategies.

It is these new opportunities for development that the real estate community should consider for immediate action while the concept of social property wends its weary way through the courts and scholarly journals and delays most conventional nonurban development until all the litigation has been completed.



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