TOWN PLANNER MEETS TAX MAN

The prevailing bureaucratic practice of problem isolation and the concomitant growth or narrow expertise is easily understandable in light of the number, scope and complexity of issues confronting the contemporary state. But identifying the cause of this practice does not mitigate the importance of seeking an overall sense of common purpose in the polymorphous structure of government. Partially because a sense of direction is absent, governmental programmes which touch the sphere of town planning even tangentially can become serious obstacles for the planner to overcome. Many of these are beyond the reach, understanding and sometimes even the knowledge of the planner. The complex and multi-layered system of land valuation and rating currently in force in New Zealand is one of these oblique and troublesome factors which offer a standing challenge to the planners' power to plan.

THE POWER TO TAX

Governmental bodies seem always to have used taxes not merely to raise revenue, but to advance non-fiscal policies as well. This procedure carries the latent danger that the non-fiscal policy which the tax is intended to advance will have unforeseen consequences which conflict with other—perhaps more important—governmental objectives. Discord erupts among overlapping governmental systems and their constituent parts when sphere "A" manipulates the revenue laws without exploring the impact of these changes on the functioning of sphere "B". In a system of independently functioning entities such discord is relatively common. An examination of some recent amendments to the rating and valuation statutes is illustrative of this friction and of the unforeseen path which the ensuing chain reaction can take.

One example of a rating policy which may have a significant impact upon local land-use planning is embodied in the Counties Amendment Act (No. 2) 1969. This piece of legislation added a series of sections to the Counties Act 1956 which governs some aspects of local rating. One of these new sections is 111B, which provides that: "the (County) Council may . . .

(a) Declare that for the purpose of making and levying the general rate in the county . . . the county . . . shall be divided into such differential rating areas as are described in the special order".

Section 111M, also added to the Counties Act 1956 in 1969, provides that:

> "so long as the county . . . is divided into differential rating areas, the Council, instead of making and levying a uniform general rate over the county as a whole . . . shall make and levy a general rate on all rateable property within each differential rating area of such differential amounts in the

dollar on the rateable value of the rateable property in each such area as the Council by resolution fixes and determines from year to year".

The effect of sections 111B and 111M is to permit the County Council to treat similar parcels of property differently for rating purposes. Different levels of rate burden may now be imposed upon otherwise similar land, purely on the basis of location *vis-à-vis* value.

The impact of this legislation upon land-use planning may be as significant as it is obvious. If used in conjunction with zoning, as is clearly the intention of Parliament,[1] this system of differential rating could either assist or retard the implementation of a local plan depending upon how the authority is exercised.

The close relationship between land-use planning and the total revenue producing system is brought still further into focus by some recent changes which have taken place in New Zealand rating and valuation law. One of these changes has grown out of the long felt need for the law to recognize that rateable property cannot always be valued as the law has said it must be valued.

For reasons which will be gone into later in this article the traditionally accepted basis of land valuation has been the "unimproved value" of the land. This valuation standard is intended to reflect the present value of land as it would now exist if it had remained unaltered since it was settled. It has become apparent over the years that this is not only an artificial but also an impossible standard to meet.

It is often impossible to distinguish between natural and man made land forms. No one can possibly know how the land has been changed through drainage, excavation, fertilization, reclamation, bush clearance and other forms of transmogrification since it was first settled by Europeans.

Because the original condition of the land is often impossible to determine, much land has, in fact, long been valued on what has come to be known as its "site value" or its "land value", i.e. the value of the raw land as it now exists leaving aside the value of all structural improvements. The need to sanction this shift away from unimproved value was recognized in the Valuation of Land Amendment Act (No. 2) 1970, sections 2 and 3.

Concurrent with this important shift from "unimproved value" to what is now called "land value", has been another, more important change in the process of valuing rateable property. The thrust of this change has been to alter the basis of rate valuation from actual value to an artificial value which is intended to reflect certain existing uses. Existing use valuation looks only at the use to which the land is actually put rather than to uses, perhaps more lucrative, which are

1. See Counties Amendment Act (No. 2) 1969, s. 111F.

permitted under the local planning scheme, and for which there may be a market demand.

Because this important corner of the law has been neglected by New Zealand legal writers, it may be profitable to examine the development of these statutes in some detail.

SPECIAL RATEABLE VALUE PROVISIONS

The prime antecedent of this system of use valuation is the Urban Farm Land Rating Act 1932.[2]

This act provides a method of deriving a "special rateable value" for certain farm land. Since this value is intended to reflect only the present farming use rather than encompassing all uses which are presently possible, it is clearly an artificial value. It is imputed to the farm land solely for purposes of computing local rates.

Any farm land contained in an urban district which is either unfit for subdivision or unlikely to be subdivided in the next five years is eligible for this preferential treatment provided it contains more than three acres.[3]

The statute is very vague in setting out the formula used in deriving the special rateable value. The relevant section states that "The Council shall determine . . . whether or not the rateable value should be reduced . . . taking into consideration . . . the following:

(a) Whether the rates payable by the occupier are excessive or unduly burdensome.
(b) The Municipal services available . . .
(c) The incidence of . . . rates in the urban district.
(d) Whether any reduction would be likely to impose an undue burden of rates on the other rate payers of the urban district."[4]

The purpose of these provisions is to relieve the farmer of the pressure of mounting rates in areas of transitional urban development.

The way in which this is to be done is left largely in the hands of the local body.[5] In practice the level of rating which is imposed

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2. Now Part IV, Rating Act 1967. See also Valuation Department Research Paper 68–1, *A Critical Study of the Unimproved Value of Land*, 1968, p. 28.
3. Rating Act 1967, ss. 117 and 118.
4. Rating Act 1967, s. 120 (4).
5. For the only available discussion of the practical workings of this statute see J. S. H. Robertson, Valuation Department Research Paper 663, *Local Rating in New Zealand—A Study of its Development*, 1966, p. 18 *et. seq.* which states that "No statistics have been published regarding the extent of the operations of the . . . Act, nor does it appear that any complete figures are available. From such information as can be obtained, however, it appears that as at 31st March 1963, something like 3,000 urban farm properties were included on rolls prepared under the Act, mostly in districts rating on the unimproved value. The rateable value of the properties in question was approximately £6 million, the special rateable value was approximately 70% of this figure, and the rate relief obtained amounted to approximately £65,000". *Op. cit.* p. 19 para 11. 13.

upon farmers in adjoining rural administrations is probably used as an index in fixing the rate burden of the farmer in an urban area.

In 1967 the Valuation of Land Act was amended to add s. 25B and thereby extend the special rateable value approach of the Urban Farm Land Rating Act.[6] The section directs the Valuer General to determine the special rateable value of land that is *zoned* for residential or rural purposes pursuant to the Town and Country Planning Act 1953 but *used* for commercial or industrial purposes.[7] This special value must always be higher than a value derived without reference to the actual use of the land.[8] The section also states that "No objection to the amount of any special rateable value determined under this section shall be upheld except to the extent that the objector proves that the special rateable value of the land does not preserve uniformity with existing roll values of comparable parcels of land in areas zoned . . . for commercial or industrial purposes . . . "[9]

The effect of this section is to declare that land which is in fact used for commercial purposes shall be valued for rating purposes as though it were so zoned, regardless of the fact that it is located in a residential or rural zone.

Section 25E, added in 1970, is similar to s. 25B except that it is much more inclusive. It says simply that land which "is used for any purpose that is an existing use within the meaning of section 36 of the Town and Country Planning Act 1953, and . . . is likely to continue" in that use during the currency of the valuation roll[10] should be given a special rateable value which reflects only its present use. Under this section "existing uses" which are higher or more intensive than that specified in the zoning designation will be treated as permitted uses and the land will be valued accordingly, i.e. the valuation will be increased. Conversely where the non-conforming use is less intensive than is permitted in the zone, the value of the land will be reduced for rating purposes.

It is not difficult to foresee the impact of s. 25B upon owners of commercial property in rural or residential zones. Nor is the effect of this section likely to be overlooked by the potential purchasers of such land. In all probability the goals of the local planning body will be well served since industrialists will not be tempted to continue non-conforming commercial uses in rural zones as a means of minimizing their rates. In those instances where s. 25E results in an increased valuation it will have the same effect as s. 25B.

This, unfortunately, does not appear to be true of a series of new sections added in 1970. The Valuation of Land Amendment Act

6. Valuation of Land Amendment Act 1967.
7. Valuation of Land Act 1951, s. 25B(1) (b) and (c).
8. *Ibid*, s.25B(3).
9. *Ibid*, s.25B(5).
10. 5 years.

1970 added provisions which amplify the special rateable value concept in a way which, from a town planner's point of view, seems ominous indeed.

The first of these sections, 25C, is the inverse of s. 25B. The only significant difference is that whereas s. 25B applies to all land in the designated uses and zones, s. 25C applies only to land which the Valuer-General considers unlikely to be used for the zoned purpose within the next ensuing quinquennium. It provides for the determination of a special rateable value for land which is zoned for commercial purposes, but used for rural or residential purposes. The result of this section is that, given the Valuer-General's approval, land which is used for rural or residential purposes will be valued as though it were so zoned, despite the fact that it is located in a commercial or industrial zone.

Section 25D provides a use oriented valuation procedure for land which is used for single-unit housing, but located in an "area where the rateable value of residential land is to some extent attributable to the actual or potential use to which such land is or may be put for multi-unit housing purposes."[11]

The effect of ss. 25C, 25D, and in some cases s. 25E, is to ignore — for the purposes of valuation — land value which arises from a planning designation. The value which would otherwise have resulted from the availability of more intensive land use is thereby excluded.

RATE POSTPONEMENT PROVISIONS

Not all of the recently added "use value" provisions of the valuation and rating statutes totally exclude values created by changing land use patterns and zoning designations. Beginning in 1954,[12] a system of rate postponement has grown up which, as its name suggests, delays payment rather than effecting a flat rate reduction.

The theory of keying valuation to use is the same under this postponement procedure as that embodied in the special rateable value sections. The only substantive difference is that under rate postponement the land, rather than being given one reduced valuation, is in effect valued twice. The first valuation follows normal valuation procedures and therefore considers all possible uses. The second is made as if the land were located in an area where the zoning is consistent with the use. The difference between the rates payable under each of these alternative valuations is the amount which is postponed.

The basic provisions of the postponement system are to be found in s. 25A of the Valuation of Land Act.[13] This section provides

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11. Valuation of Land Amendment Act, 1970, s. 5 adding s. 25D(1) (b).
12. Rating Amendment Act 1954, ss. 4 and 5.
13. Added by Valuation of Land Amendment Act 1965; No. 64.

that the Valuer-General shall determine a "rates-postponement value" for certain property used for residential or farm purposes.[14]

Section 25A does not seem clearly to specify the means by which this "rates postponement value" is to be computed. It says only that in the case of residential land it is to be assumed that the present actual use is a permitted use under an operative district scheme within the meaning of the Town and Country Planning Act. In the case of farm land it is to be assumed "that the rates-postponement value does not include any potential value . . . the land may have for subdivision . . . building . . . or for commercial or industrial use."[15]

Despite some minor differences of wording it would appear that the rates-postponement value yielded by this formula is virtually identical to the "special rateable value" produced by the other lettered 25 sections. It is clear in any case that this "existing use" valuation will be substantially lower than a value derived with reference to such vital economic factors as zoning and neighbouring land uses.[16] The obvious reason for this is that, in the absence of other variables, the more intensive the land use the higher the land value.

Many of the mechanical features of this postponement device are contained in the Rating Act rather than in the Valuation of Land Act. The valuation statute governs only valuation. Having established this reduced value one must turn to the Rating Act Part IV in the case of residential land and to Part V in the case of farm land. The eligibility requirements are somewhat different for each.

In order to qualify for postponement, residential land need only be situated in an area that is zoned for industrial or commercial purposes. Before farm land can qualify for rate-postponement, however, it must first be designated as a "special area".[17] In order to be so designated the County Council in which the land is located must find that "the rateable value of farm land in that part is to some extent attributable to the potential use to which that land may be put for urban development."[18]

When residential land[19] or farm land[20] is found to qualify for rate-postponement the occupier may apply to have a "portion"[21] of his rates postponed.

14. The definition of residential property is now found in the Rating Act 1967, s. 87 and the farm land definition is contained in s. 2 of that Act.
15. Valuation of Land Act 1951, 25A(3) (b).
16. My most stentorian critic has said of this sentence that "To equate zoning and neighbouring land-use with a higher value for the subject property in any real sense of the terms involved is to ignore the demand side of the land-use equation". Unfortunately he prefers to remain an anonymous civil servant.
17. Rating Act 1967, s. 109.
18. Rating Act 1967, s. 109(3).
19. Rating Act 1967, s. 88.
20. Rating Act 1967, s. 111.
21. The statute offers no guidance in setting the amount — presumably it could be the maximum amount permitted.

As has been noted above, the maximum amount of postponed rates is calculated by subtracting the rates paid under the s. 25A "rate-postponement value" from the amount of rates which would normally have been paid in the absence of any preferential valuation.[22] The difference between these two figures is postponed for up to five years, after which it is written off.[23] Should the property at any time fail to meet the eligibility test for rate-postponement, then any rates which have been deferred during the last preceding five year period become due and owing.[24].

THE OVERLAP OF PLANNING AND RATING

From the foregoing brief summary it should be clear that an intimate nexus exists between New Zealand's valuation-rating statutes[25] and its town planning legislation. To fully appreciate the nature and scope of this relationship one must possess a basic understanding of New Zealand's widely used system of unimproved value rating. This background knowledge is rendered doubly important by the fact that the impact of unimproved value rating upon land use is ineluctable. Indeed one of the principle arguments in favour of unimproved value rating is that it produces a more rational pattern of land use.[26]

As we have already seen, the unimproved value approach to valuation was modified in 1970 to reflect the impossibility of always meeting the standard. Under the new "land value" approach most non-structural improvements are now taken into consideration in deriving the rateable value of land. To a large extent, however, the arguments which prompted New Zealand to adopt the unimproved value system are equally applicable to the land value system of rating. This is particularly true in urban areas where structural improvements comprise a high proportion of the capital and labour used to improve the land. It is also commonly true that in urban properties structural improvements constitute a large proportion of the total capital — or market — value of the fee simple.

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22. Rating Act 1967, s. 93 (2).
23. Rating Act 1967, s. 97.
24. Rating Act 1967, ss. 98 and 99.
25. Under a system of local option, New Zealand rating law recognises three methods of valuation: "capital value" which is the amount for which the land together with improvements can be expected to sell in a normal transaction; "annual value" or net rental value; and "unimproved value", which is the market value of the land alone, excluding most visible improvements. (Rating Act 1967 ss. 2 and 7).
26. In an interview a senior officer in the Valuation Department refuted this contention. "Proponents of land-value rating argue that their system promotes development; but, for example, in Auckland we have jurisdictions cheek by jowl which use capital value (includes improvements), annual value and unimproved value (land alone). We defy anyone to pick from air photos which is which." (Interview with J.S.H. Robertson, Senior Advisory Officer, Valuation Department, Wellington, 27 August, 1970).

Advocates of unimproved value and land value rating argue that the taxation of buildings and other improvements has a dampening effect upon development. Conversely, when land alone is taxed according to its worth, without regard to the actual use to which it is put or to the level of its capital development, those landowners who cannot afford to develop their land are encouraged to sell to those who can.

These are some of the theoretical arguments commonly advanced by those who favour land value rating. But the conceptual roots of unimproved value rating go much deeper.[27]

One writer has suggested that:

> "Because of the correlation between population growth (and concentration) and increases in land values the philosophy that landowners should bear these costs received support in the classical theory of land rent as an unearned increment. According to Ricardo, rent from land is essentially a private expropriation of its natural productivity or site value (location) which does not originate in human effort or skill. A tax on unearned increases in land value therefore does not impair use of the land or act as a brake on production."[28]

The two fundamental reasons most frequently given in support of land value rating are: a) taxing land alone promotes the highest economic use of land, and b) a tax on land value simply returns to society wealth which society alone has created.[29] The first argument, of course, is not really one in favour of taxing land. Instead it is a reason *NOT* to tax structural or other improvements.[30] The second argument urges the taxation of windfall accretions to land value rather than the amount of the original investment. The extent to which this philosophy is supported in practice can be seen from the following chart of local rates levied in the year ending March 1969.

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27. See Valuation Department, Research Paper 68–1, *A Critical Study of the Unimproved Value of Land;* 1968, Chapter 2.

28. *Ibid,* p. 21.

29. Quoting John Stuart Mill . . . "Suppose there is a kind of income which constantly tends to increase without any exertion or sacrifice on the part of the owners; those owners constituting a class in the community whom the natural course of things progressively enrich consistently with complete passiveness on their own part. In such a case it would be no violation of the principles on which private property is grounded if the state should appropriate this increase of wealth, or part of it, as it arises. This would not properly be taking anything from anybody; it would merely be applying an accession of wealth, created by circumstances to the benefit of society, instead of allowing it to become an unearned appendage to the riches of a particular class." *(Principles of Political Economy, 1848).*

30. As has already been noted, this depends upon whether "land value" or "unimproved value" is sought.

1969 RATES[31]

System	Cities & Boroughs	Counties	Town Dist.	Total
Annual Value	12,971,878	—	5,611	12,978,093
Capital Value	2,793,594	7,229,713	37,464	9,900,771
Unimproved Value	47,492,201	18,391,174	161,093	66,136,510

The theoretical sagacity of these arguments has long impressed New Zealanders. Indeed these seminal ideas began to appear in the revenue statutes as early as 1878.[32] The assumptions which motivated early New Zealand to embrace the land value rating philosophy were well summarized by the Colonial Treasurer, Hon. John Ballance, when he declared that:

> " . . . We believe that no form of wealth is more legitimately called upon to contribute a portion of the public revenue of the colony than the value of land *minus* improvements, which, for brevity, I shall call the unimproved value as no other commodity increases so rapidly in value from the increase of population and the natural progress of a country. By exempting improvements we award a premium to industry, and discourage a system of speculation which thrives only upon the labour of others."[33]

The statute which prompted Ballance's remarks was short lived, but its philosophical underpinnings are as widely accepted among policy makers today as they were nearly a century ago. They remain the central justification for New Zealand's present system of land value rating. The recent alterations in the valuation and rating statutes must be considered within the matrix of these ideas as well as within the context of the very complex fabric of the statutes themselves.

While this light from the past helps to identify the current battle-ground, it falls short of illuminating it completely. It is also necessary to understand why the valuation and rating statutes have been amended to favour individual preference in land use at the expense of those who strive for the economically optimum use of their land, i.e. other ratepayers in the zone who use their land for the more intensive purposes permitted under the plan.

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31. These statistics disguise the fact that the major cities of Auckland and Lower Hutt rate on the annual value system. In these major metropolitan areas the statutes here under scrutiny would have no effect. And since annual value rating produces a uniform application of the "existing use" concept, the planner's job should not be affected. To quote an ancient Chinese proverb "When all men have dignity, no man has dignity". It is the preferential effect of differential rating which poses the most serious planning problem.
32. Land-Tax Act 1878. See Valuation Department Research paper 68–1 s. 2.11 p. 5.
33. New Zealand Parliamentary Debates Vol. XXVIII pp. 90–91 as quoted in Valuation Department Research Paper 68–1 at pp. 5–6 para. 2.12.

Ostensibly these statutory changes seem to represent a quest for fairness in valuation policy. The long recognized need for reform stems from the fact that in transitional urban fringe areas zoning nearly always frees more land for intensive land uses than the market can absorb at any given time. Thus in a fringe area zoned for commercial or residential purposes there may be 100 parcels of land, of which 25 have been developed for the permitted use. The remaining 75 may be used for rural farming purposes or some other less intensive land use. The question then arises: How is the remaining farm land to be valued?[34] The developing parcels will eventually sell for prices which reflect the availability of uses far exceeding the economic productivity of farm land. It is even possible for the rates based upon these high commercial values to equal or exceed the gross income of the farm land in its present use.

It is impossible for the valuer to know which of the remaining 75 parcels will be sold and developed within the ensuing valuation period. He can scarcely assume that because each of the 25 parcels sold for development yielded high prices, each of the remaining 75 parcels are now worth a similar amount. A tax predicated on such an assumption could be confiscatory. At the same time the valuer can hardly ignore the trend toward development in the area — a trend which demonstrates that some of the remaining land will sell for relatively higher prices than those paid for farm land generally.

This dilemma results from the twin facts that: a) there is often a radical disparity in value between similar properties in different land uses, and b) land uses are normally converted gradually over broad areas.

The approach to resolving this dilemma which is embodied in the 1970 statutory changes discussed above has been to inject progressive features into what is an inherently regressive tax. This is done

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34. There appear to be only four reasonable choices:
    (a) To value only those sections which have sold at high prices at a correspondingly higher level of unimproved values in keeping with those prices, while valuing the remainder of the sections in the zone at figures which reasonably reflect the actual uses to which they are being put — for example, industrial unimproved values assigned to land used for or sold for industrial purposes, with residential unimproved values on the properties still used for housing purposes; or
    (b) Value all lands in the zone at industrial values on the basis that a well-informed owner of a site at present occupied by a house would, if it were clear of improvements, ask a price for it in line with what has been obtained by other owners for sections purchased from them for industrial purposes; or
    (c) Value all lands in the zone at some intermediate figure between residential values at the lower end of the scale and industrial values at the upper end, the approximation to one or the other depending upon the extent to which the change of land use has proceeded; or
    (d) Assess full industrial values on the factory sites and sites known to have been purchased for factories, and figures intermediate between residential and industrial values on the sections still occupied by houses.

by ignoring the fact that more intensive land uses may be available for any given parcel of land in certain zones. The theory implicit in this approach seems to be that the land should be valued, and hence rated, on the basis of its existing productivity or use, i.e. its ability to pay.[35]

This change is an ambitious undertaking, but not one free of potentially dangerous, and probably unintended, consequences. The most immediately obvious of these consequences is that the rates on all land which is not treated preferentially (i.e. land used for the intensive purposes foreseen by the zone) must be raised. This rate increase is made necessary in order to make up for the reduction in gross revenue which results from the artificial "use valuation" granted to landowners who, with the consent of the Valuer-General, choose to use their land less intensively than their neighbours. This in turn discourages development of land zoned for intensive purposes and encourages other landowners to qualify for the rate reduction. The subsidized landowners are thus urged to continue in their present use until such time as it is in their best economic interest to develop the land. The communal land-use objectives embodied in the local plan will perforce be subordinated to the economic self-interest of the landowner who has chosen to use his land in a way which is contrary to the expressed wishes of the community, (at least to the extent that those wishes are known).

Important as this danger is, however, the disruptive effect of this preferential valuation and rating system upon the balance of supply and demand which governs land economics is still more ominous. The excess of the supply of land zoned for intensive development in transitional fringe areas over the immediate demand for it is attributable in part to the fact that not every landowner is willing or financially able (which amounts to the same thing) to use his land for the intensive use permitted under the zone. If it were only a question of demand, the job of the planner would be relatively simple. He would, with varying degrees of success, zone only enough land for intensive uses to accommodate the foreseeable demand. Such a system breaks down, however, when these economic factors are subjected to other use-influencing economic pressures. This is precisely the sort of imbalance which the present valuation-rating provisions threaten to create.

By encouraging the decision of a landowner in a transitional zone

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35. The rationale which has been put forward is that a limited demand for a higher and better use, evidenced by a few sales at high prices, is scarcely a good reason for rating at the higher level of values all lands which are situated in the areas where the next high sale might occur. The argument runs that in the "real world", theoretical advantages of a particular rating system afford no consolation to the owner of a family home who finds his rating bill matching in amount the combined bills of, say, six flatowners on a similar sized section adjoining his own. From this the conclusion is drawn that the special rateable value sections have the effect of better equating the rating base with services rendered to the properties by the local authority and the ratepayers' ability to pay.

not to develop his land, this scheme of preferential rating exacerbates a condition which already constitutes a serious obstacle to effective planning. After the 1970 amendments, landowners in these transitional zones are, in effect, paid *not* to develop their land in the manner permitted by the zoning designation. The effect of this as we have just seen is clear. Landowners seeking to maximize their economic return from the land will withhold that land from the market for as long as possible. At the same time the demand for that land will rise as the zone is gradually developed thereby placing pressure upon the planning body to rezone still more land for the intensive land use.

This unnecessary withholding of land from the market is usually most intense in areas of transitional land use. In developing regions such as those found on the periphery of New Zealand's major metropolitan centres, this normally means the urban-rural fringe. When land in these fringe areas is withheld from the market, an artificial demand for outlying land is created. The concomitant pattern of "leap-frog" development is further accelerated by the prevailing tendency for land prices in developing regions to be sensitive to the inflationary forces which push them up, but unresponsive to downward pressures. This tendency is attributable to the natural market preference for land adjacent to developed areas from which services can be economically extended. The unavoidable delay in development caused by legal and financial procedures, as well as the actual mechanics of subdivision, development and marketing, spurs demand for land farther removed from the urban centre.[36] When additional land does become available, the higher price being paid encourages speculation which delays release and thus accelerates the price inflation.

The reason for this cumulative inflation, of course, is that the value of land like other market commodities is governed by the balance of supply and demand. The supply of the Earth's land is fixed, but with the increase in gross population and the accelerating trend toward increased population density in urban regions, the demand for *urban land* will inevitably rise. One function of town planning is to confine and direct the supply of land which is available at any given time for various uses and to accommodate thereby the demands placed upon land to the extent possible within the context of overall comunity planning objectives.

Planning alone, however, does not govern demand. On the contrary the demand for land can fluctuate dramatically not only in response to general market variables, but to such economic stimuli as rating policy as well. The ticklish business of balancing supply and demand is hampered when land which has been made available to satisfy a demand is not used for the designated purpose. This can and does happen when for some reason a premium is placed upon

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36. *Land Taxation and Land Prices in Western Australia,* Report of the Committee appointed by the Premier of Western Australia on the Taxation of Unimproved Land and on Land Prices. 1968, p. 18 para. 3.9.

continuing the present use and thereby withholding the land from conversion to the use for which there is a demand. When a local plan allocates an appropriate amount of land to satisfy a given community requirement, then, as that requirement is felt by the community, buyers for the land will come forward. To the extent that the plan is successful in forecasting communities' needs for various kinds of land, then the plan will necessarily succeed in forecasting demand for those categories of land. Assuming that the plan succeeds in equating demand and need, it follows that when land is withheld from an existing market the demand for such land will always exceed actual need. The needed land will be physically and legally available (in the planning and zoning sense), but because it is not available in the market, an artificial demand will be created for additional land. And, not to ignore the obvious, it may be worth noting that the factors which cause *demand* to exceed *need* are the same factors which encourage land speculation. When rural farm land on the fringe of urban development is zoned for commercial purposes, there will come a time when the farmer's decision to convert the use of his land is governed solely by the factors which influence the market for commercial land rather than farm land. At that point the farmer becomes a land speculator. It is ironic that it is at precisely this point that the valation and rating laws take pity on him.

Under the recent amendments to the valuation and rating statutes any value which may be added to farm land as a result of a change in zoning is ignored for rating purposes. The farmer is therefore relieved of the burden of paying rates based upon these higher values. His holding cost is lowered and he can therefore afford to hold out for a higher price while continuing to farm.

Before the point at which these statutes become relevant to the farmer, the value of his land was established in the market place of farm land buyers. After the point at which these provisions become important, the value of the land is determined — not merely influenced — by commercial land buyers. The 1970 statutory changes now in question do nothing more than reflect this economic fact and prevent it from encouraging the change in land use contemplated by the planner.

The cumulative effect of these statutory changes is, therefore, to exacerbate the unavoidable disparity between the supply of land available for a given purpose and the community need for that land. These changes in pre-existing law have this effect because they help to perpetuate the inflation of demand above need which creates an artificial land shortage. The shortage is artificial because more of the land in demand is tied up in other uses than is actually needed for the uses in demand. It should be plain, however, that the effect of this new legislation upon the market is anything but artificial.

The market effect of these statutory changes is, as has been indicated, to reduce as far as possible the cost of withholding land which is needed for other purposes from the market. This inevitably

means that part of the speculator's overhead, i.e. rates, must be assumed by other ratepayers. Assuming a constant or growing budget, the cost of government is simply spread over a more narrow area. The speculator's share is in effect shifted to those who are already paying their full share. This, it should be noted, is more than an interest free public loan, for when the speculator sells his land for development he may never have to pay back a cent of the money given by way of preferential rates. At most he will be compelled to repay only the savings realized over the preceding five year period. And he will only repay that at a time when his profit causes such repayment to be as painless as possible.

When viewed in this light rating policy is seen as simply one additional factor which encourages the withholding of transitional land from the market. By so doing it promotes the artificial demand for additional land not actually needed and thus frustrates the planner's objective of rational land use.

The message which must be learned is that there is a crucial difference between the *amount of land* in and around urban areas which is ripe for development and the *supply of land* which is actually available for that development. The difference is largely attributable to town planning and the withholding of land by speculators. The very existence of a community plan tends to worsen this situation by telling the land speculator where to buy if he wants a long term capital gain. New Zealand's present valuation-rating law compounds this unavoidable hazard. When the speculator buys transitional land on speculation, he is treated under the valuation and rating statutes as if he were entitled to the same deference as an octogenarian war widow, who victimized by progress and changing patterns of land use, is interested only in living out the last years of her life in the ancestral cottage. His rate bill should be printed on absorbent tissue to soak up the flow of tears.

It is worth noting that the complaining ratepayer is always a person who seeks to perpetuate a non-conforming use. He is thus opposing the plan at every stage.

The answer to this problem is to encourage the ratepayer to realize the increased land value through sale or, if there is no increase, to invoke s. 36 of the Valuation of Land Act. Under this provision a landowner may compel the government to purchase land — at the price specified by the valuer — if the landowner is displeased with the valuation. After all, war widows can be speculators too. And their effect on land economics and town planning is not discernibly unlike any other person's disruptive influence. The overall effect is the same. Prices are driven up while needed land is withheld from the market. If speculation were not encouraged in this way, people who lived in a developing area would not be saddled with artificially high rates resulting from artificially high land values. Deprived of this rationale, much of the justification for rate reform such as "special rateable value" and "rate postponement" schemes would be gone.

In deciding whether to have mercy upon the land investor it should be recognized also that land is different from other commodities that are freely bought and sold. Dealing in land is not the same as "investing" in other commercial ventures. The ordinary investor supplies capital for the production of goods and services. The person who merely buys and sells vacant land (and one should bear in mind that it is land value and unimproved value rating with which we are primarily concerned), is a passive investor. Capital used by a passive investor is entirely non-productive. And as we have just seen it withholds a commodity from the community, (i.e. land in a designated use), rather than producing goods and services. The land speculator cannot expect interest or dividends because there is no production to service the capital.[37] Instead he must be prepared to pay out holding costs in the form of rates and taxes, in anticipation of a capital gain upon resale.

Under present New Zealand law these holding costs are minimized whenever possible, thus maximizing the capital gain on the increased value of the land, an increase which the speculator has done nothing to create. The speculator's profit results from two factors: a) overall community growth, and b) his ability to withhold land from the market beyond the point of public need for its development.

A study of this problem conducted in Western Australia found that "The conclusion reached by the great majority of minds that have been bent to this problem is that trading in . . . land (as distinct from land development) is not an essential feature of modern capital enterprise system. Rather it burdens the system by increasing business costs, diverting capital that could be more productively employed and forcing up the cost of establishing new enterprises."[38]

All of this can have a more serious impact upon land use planning in the broad sense than is immediately apparent. For example, the increase in land values caused largely by speculation often forces farm land out of production prematurely. In areas of intensive agriculture — e.g. market gardening, this can have other repercussions if insufficient land is left in production to support an economically viable agricultural system of production, processing marketing etc.

The threat of cutting up land needed for intensive agriculture becomes quite obvious when one realizes that it is the land in the floor of New Zealand's coastal valleys which is most suited to urban development. It is also the only land suitable for certain forms of intensive agriculture. Unless New Zealanders want to import their fruits and vegetables from overseas or from greater distances at higher costs, this land must be protected from the ravages of urban sprawl. These statutory changes encourage the unplanned development of land on the fringe of urban regions. This pressure is admittedly indirect, but it is nonetheless quite real. Moreover, this constraint toward haphazard

37. *Ibid*, p. 48, para. 7.8.
38. *Ibid*, p. 49, para. 7.11.

urban sprawl is but one consequence of the tax shelter which results from the refusal of the rating law to tax speculative wealth. Town belts, water catchment areas, geologic fault zones and other forms of open space will all feel the same development pressure. Such a course inevitably elevates private economic self interest above those public interests which local plans are adopted to serve.

ALTERNATIVES

The reader may infer from the above discussion that the 1970 statutory changes now under discussion were *conceived* in error and developed in confusion. This is by no means the case. The problems which these amendments were designed to rectify are real enough. But it is suggested that the answer to the problems of valuation reform and rating inequity is not indiscriminate subsidy of every landowner who is either unwilling or unable to convert the use of his land. A more logical solution would seem to be found in amalgamating rating policy with planning policy in the affected areas.

The task of fusing rating with planning policies raises basically two kinds of problems. The first is the economic problem of guaranteeing the landowner that his land will be realistically valued. This really means granting an assurance to the ratepayer that a market exists for his land, a task which is not insuperable if the supply and demand equation is properly regulated through careful planning.[39] The second and more basic problem, therefore, is one of maintaining a durable system of land use controls capable of withstanding the withering political and economic heat generated by those anxious to profit from land speculation.

Zoning, acquisition and contract are the three basic means through which government may control the use of privately owned land. Of these three techniques only zoning and acquisition are widely used in New Zealand. Each of these three devices can be used effectively in conjunction with a system of existing use valuation and rating.

One suggested approach to combining zoning and rating has emanated from the Valuation Department. The suggestion is to make certain intensive uses "conditional uses" under the local zoning scheme. Before the conditionally permitted development could be commenced the developer would be required to secure special authorization from

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39. Those who have championed the recent changes in valuation policy contend that this statement is "pie in the sky" and that in a country of this size, "a well equipped and responsible central valuation authority can be expected to achieve at least as much to rationalise the overall situation as a multitude of planners of varying calibres and a greater multitude of plan implementers concerned only with their particular specialities and their often narrower interests." If this contention is valid it would seem a strong argument in favour of facing the planning problem head on rather than trying to cure its weaknesses via the valuation legislation. This assumes, of course, that the job of the valuer is to value rather than to plan.

the local authority. The suggestion is that "the very fact that special planning permission has been obtained sets these blocks apart. . . . Higher land values in keeping with the prices paid may then be assigned to these conditional use properties without paving the way for arguments that, in the interests of uniformity, such enhanced values should also be placed upon neighbouring sections."[40]

This suggestion has the advantage of allowing the landowner's decision to develop to initiate the valuation change. It may not be perfect. One assumes that the landowner would simply wait until his development plans were relatively final before asking for permission to build. But as imperfect as this suggestion may be, it does begin to integrate planning with rating. That at least is a step in the right direction.

Another approach which has met with some success overseas is the use of preferential rating as an incentive to voluntary land use restriction.[41] The usual format of such a programme entails the designation of eligible land by a city or county. The local body may then offer to enter into a contract with the landowner whereby the use of the land is restricted to certain uses for a definite period of time. During the term of the contract the land is valued according to its use. As the contract expires the valuer may reflect the impending removal of the restriction. He does this by discounting the future value to arrive at its present worth as one does with an immature bond. The contract can be made to run with the land such that future purchasers are also bound by its terms. In this way other members of the community are given some assurance that the landowner will continue in his present use. And by foreclosing alternative uses, even to subsequent purchasers, the public gains some assurance that a windfall profit will not be made at public expense. It also demands a measure of good faith on the part of the ratepayer who seeks a reduction in his rates. In order to protect the community from land speculators no rate reduction would seem fair unless the landowner expects to continue his present land use. If such a ratepayer is truly interested in continuing his present use he should be willing to restrict himself to that use before being permitted to shift the burden of financing government to other ratepayers in the district. The most important advantage of this system is that the preferential rating is granted only to land which is used for purposes specified in the plan. Thus the lure of reduced rates encourages landowners to carry out the local plan rather than encouraging them to act contrary to the plan. Such a programme would mark a salutary move away from the inconsistencies of present New Zealand law.

The same technique can be used in conjunction with the acquisition of some interest in the land. Development easements, scenic

40. Valuation Department Research paper 68–1, p. 27, para. 4.62.
41. See my article *"Article XXVIII — Opening the Door to Open Space Control"*, 1 Pacific Law Journal 461, pp. 492–495.

easements, conditional and determinable fees can be used successfully to control the use of land. Use valuation and rating can, in this context, play a dual role. First, use-value rating is an incentive to the landowner to grant or sell to the state the property interest which the plan deems necessary. Secondly, it furnishes an equitable means of compensating the landowner who has earned the right to preferential rating.

All of these devices share a common orientation. Under each of them rating policy is used to further the objectives of the local plan rather than to thwart them. And because the landowner gives up a measure of freedom in return for the use value rating of his land, other landowners in the area are not required to shoulder more than their share of the cost of governmental services. By guaranteeing a unity of present and future uses the landowner has set his land apart from that of his neighbours. His "use valuation" is no longer "preferential" because it has been earned. This, in turn guards against promiscuous land speculation by ensuring that the public will either control development timing or demand that the landowner pay rates based upon the high land value which results from planning designation permitting a more intensive land use. Under either alternative the power to control development timing is held where it belongs — in the hands of the local planner who acts for the public at large.

Even under this system of granting preferential rating only to land which is restricted to a use permitted under the plan, there is a danger that the favoured ratepayers will reap benefits to which they are not entitled. But this can never result in perpetuating land uses which are demonstrably inimical to the public interest. The same cannot be said of the present system enunciated in the 1970 amendments to New Zealand's valuation and rating statutes.

CONCLUSION

The overwhelming majority of New Zealand's local jurisdictions levy rates on the basis of the unimproved value of land. Most ratepayers seem to favour a system which does not tax the capital or labour used to improve their land. Highly developed land is thus rated on the same value as comparable land which has not been developed. When a local plan permits intensive land development those landowners who fail to develop their land to the economic optimum permitted by the plan will pay — on a per acre basis — a disproportionately higher tax than their neighbours who have fully developed their land.

This phenomenon has caused many landowners to protest against the "inequity" of rating undeveloped land at the same level as developed land. The governmental response to this ratepayer dissatisfaction has not been to abolish the unimproved value system of rating, but to devise a formula for valuing land in a non-conforming use as though it were located in a zone which permits the actual use of the land.

Where the relevant zoning would permit more intensive land usage than is being made of the non-conforming land, the ratepayer's tax bill is reduced. Ratepayers who are using their land as the plan intended must then bear the cost of the rate reduction granted to the occupier of the neighbouring property. Non-conforming uses are thus subsidized by the community and pressure is created to zone additional land for the intensive uses permitted in the zone.

The rationale for granting rate reductions to non-conforming land users in intensive-use zones stems from a feeling of fairness. Those who champion this legislation do not consider it fair to impose a relatively high tax on land which has not been developed and hence does not require the level of urban services which must be supplied to more highly developed land.

In point of fact removing the incidence of high rates on land in non-conforming uses (which result in turn from high land value) is simply an indirect means of abolishing the land value approach to rating. For land which conforms to the zoning designation the effect is to alter the rating system from land value to something like capital value.

By ignoring value held in non-conforming and relatively under-developed land in a given district, the local tax base is reduced. To raise the same quantum of revenue as was generated before, the tax rate must be raised. Since the owner of land developed in accordance with the town plan does not, under this formula, receive a reduction in rateable land value, his rates are assessed on the full value of his land. In addition those rates are levied now at a higher dollar rate than would have been assessed had his nonconformist neighbour not been given a reduction in land valuation.

In an admittedly imprecise sense the owner of the developed land is paying taxes on his improvement when he pays more than his ad valorem share of rates levied on the value of his land. At the same time the improvements on land in a non-conforming use escape taxation entirely.

The justification for permitting a scheme of rating which militates against planning is that "if town planning needs teeth it should not look to the rating statutes to supply them". This argument, of course, ignores the distinction between using rating policy to further planning, which may or may not be desirable, and permitting rating policy actively to subvert town planning objectives. The planner has the right not to expect sabotage from his governmental siblings.

The logical solution to this internecine struggle is to co-ordinate both rating and planning so that one complements the other. There are a variety of ways to align these two sets of policies. If existing-use valuation is considered to be the most promising solution for New Zealand then that use-valuation should be: a) keyed to planned development; b) linked to some form of enforceable land-use restriction

which guarantees that the existing-use valuation will not be simply a public gift to the land speculator.

"The axis of vision", said Emerson, "is not coincident with the axis of things, and so they appear not transparent but opaque." The light reflected from statutes is sometimes so subliminal that no two minds can perceive it alike. The dim auroral haze which enshrouds the law of planning and taxation affords ample opportunity for subjective analysis.

Not everyone will agree with my depiction of the statutes discussed in this article. Those who have devoted their lives to unravelling this esoteric rag end of the law may well conclude that, in the words of Norman Mailer, the yaws of my distortion were nicely hidden by the smudge pots of my indignation.[42] If so I would welcome their reply.

GERALD D. BOWDEN.*

42. *Norman Mailer,* "The Prisoner of Sex", *Harper's Magazine,* March 1971. p. 60, used to describe the work of Kate Millett.

* Mr. Gerald D. Bowden, B.A. (Minnesota), J.D. (California, Berkeley), is a Lecturer in the Faculty of Law at the Victoria University of Wellington.