



ALEXANDRINE PRESS

An American Perspective on Land

Author(s): MARION CLAWSON

Source: *Built Environment (1978-)*, 1980, Vol. 6, No. 4, Does Land Matter? (1980), pp. 251-258

Published by: Alexandrine Press

Stable URL: <https://www.jstor.org/stable/23284722>

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at <https://about.jstor.org/terms>



Alexandrine Press is collaborating with JSTOR to digitize, preserve and extend access to *Built Environment (1978-)*

JSTOR

An American Perspective on Land

MARION CLAWSON

*What is the role of the U.S. government
in land use and land use planning? What is
the pattern of land use and how does
the land market operate?
How does public policy intervene?*

Land: the Role and Control of the Govern- ment System

Land planning and land use in the United States, as in other countries, are basically the result of the nation's natural endowment in land and its resources, the economic demand for land and its products, and the overall governmental structure.

The United States has a federated system of government, with a national government, fifty states, and a vast system of local governments, including thousands of incorporated cities of various sizes, about 3000 counties which have major governmental powers affecting land, and a substantial number of special districts with some powers to control land use, including often the power to levy taxes on the land. By and large, the legal and political powers of the federal government are those set forth in the Constitution, and in laws enacted under that Constitution. Powers not granted to the federal government are, in general, reserved to the states. Cities and counties, in general, exercise powers of government specifically granted to them by the states, which also operate under constitutions approved by the voters of each state. I emphasize 'in general', because there is almost no statement which one can make about government in the United States to which there are no exceptions.

Governments at federal, state, and local levels in the United States each have three separate, distinct, and at least theoretically independent branches: executive, legislative, and judicial. At the national level, this is President, Congress, and a system of courts headed by the Supreme Court. At the state level, it is elected governor, elected legislators, and state court system. In most cities, the mayor is elected by the voters as are the city councilmen. In only some cities and in some counties is the chief executive elected by and from the legislative body. The United States most definitely does not have the cabinet system of the government of Britain and most other Western democracies. The political interrelationships among the three broad branches, at every level of government, form a fascinating subject of study in itself, but beyond the scope of this article on land.

However, this structure of government does very much affect land planning and land use in the United States. Some kinds of actions are reserved to the federal government, under the Constitution as the Supreme Court interprets it; some are held by the states, and some granted by it to local governments. In each case, the executive branch may propose legislation, which the legislative branch may accept or may modify; but the executive branch administers and applies the laws, subject to legislative over-

sight – only the courts can say what the legislation means in practice.

In the United States, the federal government owns a third of the total land area of the country. Most of this land ownership arose because, as the country acquired territory by purchase, war, negotiation, or treaty, title to the land was placed in the federal government. About two-thirds of the land so acquired has been disposed of to individuals or corporations or granted to the states, but title in the proprietary sense for a third of it still rests with the federal government. While most of this land is national parks, or national forests, or unimproved natural grazing lands, mostly in relatively remote parts of the United States, the federal government owns a surprising amount of land within cities. The federal government is not legally bound, in its use of the land it owns, by the laws or regulations of state and local government; politically, it must be responsive to their interest and attitudes.

It is commonly and accurately said that the federal government in the United States lacks legal power for direct land use planning and control, hence does not engage in such land planning and control. But this ignores the substantial indirect effects of federal laws upon use of land in every ownership in every part of the country. By the actual building of highways, airfields, and other transportation facilities, or by helping state and local governments to build them with federal grants and subsidies, the federal government substantially affects land use. The same is true for subsidies for agricultural land use, for urban waste disposal systems, and for numerous other purposes. Federal laws for the protection of air quality, or protection of water quality, or for protection of coastal zones also affect the use of private land, sometimes in major degrees. It has sometimes been said that the federal government, while possessing no direct land use control powers, has nevertheless nibbled, sometimes almost to death, the powers of states and local governments to

control land use within their boundaries.

While the states have, in general, full legal powers to legislate about private land use, until recent years the states rarely exercised such powers. Instead, they mostly delegated some of their powers to local governments, such as cities and counties. The extent of this delegation varied greatly from state to state. In the New England states, for example, the local 'towns' (which include the countryside as well) generally had substantial legal powers over land use – powers which they often did not use. In the South, the states were more reluctant to grant cities much power over private land use. Within the past decade, several states have initiated direct land use planning, direct state controls over private land use, or have exercised closer supervision over how the local governments exercised their delegated powers.

Most governmental actions affecting private land use in the United States arise at the local governmental level. Local governments can exercise any one or any combination of the following kinds of actions or controls over private land use:

Land planning, with sometimes only a purely advisory general plan, but sometimes a statutorily established and legally binding land plan to which both public and private new land uses must conform, although there is typically a 'grandfather' clause which allows existing non-conforming uses to continue, at least for a period of time.

Land zoning, or the spelling out in detail of the requirements and the limitations on land use in each of the various land use zones. Although in theory planning should precede zoning and delineate the broad zones to which the zoning ordinances apply, in fact many local bodies have enacted zoning ordinances based on the sketchiest kinds of land use plans or upon their own notions of desirable land use. Zoning, in the American terminology, is roughly equivalent to planning permission in the British terminology.

Subdivision controls govern street, lot, and public area layout of tracts of land which a builder proposes to develop for residential or other relatively intensive use, and include such matters as minimum and maximum size of lots, street curvature and grade, and cuts and fills in sloping terrain.

Building codes set forth, often in great detail, the specifications that a builder must meet, for foundations, walls, roofs, electrical wiring, plumbing installations, and other features of the structure. While defended in terms of public safety, these regulations are generally believed to have substantial effects, if not intents, for other purposes – the preservation by labour unions of rights to employment, or the making difficult of competition by builders from other areas, and the like.

Health codes specify, often in detail, the kinds of activities that may be carried on within a structure. At the extreme, they may prohibit the use of a hot plate to cook or warm food for the grandparents in their wing of the family home in an area zoned for single-family occupancy. As with building codes, the basic rationale is health and safety, but there exists a suspicion that the terms of health codes are motivated by other considerations and that the enforcement, especially for rented apartments, is restrained by political considerations.

Public services of many kinds are provided by local government and the location, quality, and pricing of such services unavoidably affect private land use to a substantial degree. Sewerage (drainage, in British terminology) is necessary for most suburban development and where the sewer lines go often determines where the private residential developments will be located. Water supply, schools, parks, and other public services provided typically by local governments are also influential in private land use decisions.

It is generally agreed by persons who have observed the American and the British land use planning and control systems in operation that the American system is more responsive to political and other pressures than is the British system. That is, when zoning prohibits some kind of land use which an economically powerful developer believes will be profitable, he is often able to get the zoning changed to meet his desires. Developers are not uniformly successful in such endeavours and in any case considerable delays are likely to be experienced, thus discouraging some such efforts. But zoning, rezoning, and other local governmental actions have provided the base for a large number of lawyers who specialize in this type of legal practice.

Land Use

The United States is a very large country, one of the half dozen largest countries in the world, and as such it has an enormous variety of physical, biological, and ecological situations. Generalizations and national totals therefore must be understood to include many substantially different situations, in some of which the national generalizations do not apply accurately. With this caveat in mind, the overall national land use situation in the United States may be described briefly.

Land used for cultivated crops, including land in rotation pastures, forest land, and native grazing land occupy over 90 per cent of the total land area of the United States. All of the cultivated cropland, most of the forest land, and some of the native grazing land is privately owned, but some of the latter two categories is publicly owned. These categories of land use are the 'big three', as far as land area is concerned. Very much smaller in total area are the more intensive and generally more valuable land uses of residential, industrial, commercial, transportation, and recreation. The United States has an extensive system of public parks, ranging from small neighbourhood parks in cities, at one

end of the locational and size spectrum, to great national parks at the other end of the same spectrum. In the United States, in contrast to the situation in Great Britain, land in national parks is owned by the national government, not by private parties. There are also some privately owned parks and recreation areas. On an acreage basis, these more intensive land uses are small compared with the big three, but on a total value basis their values greatly exceed those of the extensive land uses.

The United States has approximately four times the total population of Great Britain but it has almost forty times the total land area. This implies that the United States has far more land, in relation to population, than does Britain, and in an overall statistical sense it clearly does. But vast areas of the United States are Alaskan tundra, or South-western deserts, or high mountains in the West, or open Great Plains, wherein but few people live now, or are likely ever to live. The Boston-Washington corridor, often called Megalopolis, and the Liverpool-London corridor, sometimes called the Coffin area because of its shape, are rather closely equal in both area and population. Thus in the more heavily urbanized areas of the United States, man-land relations are not greatly different from man-land relations in the urbanized areas of Great Britain. In each there are many problems of land use planning, of wise land use, and of minimizing the impact of urban growth on non-urban land uses.

Urban residential land use in the United States is dominated by its suburbs, which is where population growth has been most rapid since World War II and where most land has been converted from various rural land uses to various urban land uses. These suburbs have been described repeatedly as 'sprawling', and indeed this is an accurate term. The sprawl takes at least three different forms, which should be carefully distinguished:

1. Floor area ratio relates the total floor

space of the structure to the total land area actually occupied by the structure. Thus, a floor area ratio of 1.0 means a building of a single floor; a ratio of 2.0 means a building of two storeys, each of the same size; and so on. A great deal of the suburban residential development in the United States in the past three decades has been of the so-called 'ranch house' type, structures of a single storey only, and often structures of 2000 or more square feet floor space. Clearly, floor area ratios which average close to 1.0 take twice as much land as structures which average more than 2.0. Of the factors involved in suburban sprawl, this is quantitatively the least important, but it is one of the more obvious to the casual observer.

2. Building lot size is highly variable in the United States, but suburban lots no larger than 6000 square feet (560 m²) usable area are considered small; 8000 square feet (750 m²) is more common for even rather closely built-up suburbs; and lots up to 20,000 or 40,000 or even more square feet (1850 or 3700 m²) are common in the higher priced suburbs. These lot sizes are, I believe, substantially larger than the common suburban lot sizes in Britain. Certainly the suburban developments I have personally seen in Britain have far smaller lot sizes than this. When consideration is given to the need for land for streets and other necessary uses strictly within the residential suburban areas, typical American suburban residential development is likely to result in something like 3000 to 5000 persons per square mile, (1200 to 2000 per km²) even when all the land is fully developed for residential use. Large lot size has been associated, in the American mind, with gracious suburban living. Lot size has affected density of urban land use in the United States more than has floor area ratio, but a sprawling ranch type house clearly requires a relatively large lot for proper setting.

3. Discontiguity of suburban development has been the major cause of suburban sprawl

and of lavish use of land in suburban areas. The builder's unit of suburban growth in the United States is the 'subdivision', a tract of land which the builder divides into lots, on each of which he erects houses of sufficiently similar quality to appeal to generally similar residents, and which offer at least some promise of compatible life styles among the residents. Within the typical subdivision, land use is relatively complete, and within the constraints previously described, relatively intensive. The difficulty is that subdivisions frequently are not contiguous. In a search for cheaper land, the builder acquires a tract a mile or more from the nearest subdivision, and builds on it, with the intervening land lying vacant for the moment and perhaps for many years, if indeed not permanently. House buyers seem not to value more distant locations significantly lower than close-in locations; an automobile for every adult member of the family is needed in any case, and a few more miles to drive to work or to shop or to school is not a major factor in the minds of many buyers. Local governments have tended to postage stamp pricing of their services, so that no more is paid for sewer service or any other public service for the distant than for the nearby subdivision. The result of all this is substantial areas of vacant land within the boundaries of the typical suburb. I have estimated, from admittedly poor data, that on the average the vacant land within the outer boundaries of suburban development is 30 per cent or more of the occupied land; and outside of these outer boundaries, but relatively close to them, is more land idled by the prospect of early residential development, so that the total area of land the urban form of land use withdraws from use by other potential uses is double the area the city actually uses.

To the casual eye, urban land use in the United States seems much less intensive than in Britain, but a closer look reveals that often this is not true. Land use in American suburbs is indeed far less intensive than land

use in British suburbs. But the overall land use density for the whole New York metropolitan area is not much different than overall land use density for the whole London metropolitan area; or for Philadelphia as compared with Birmingham. The explanation lies in the fact that in our city centres, especially the centres of our largest cities, land use is more intensive than is land use in the centres of comparable British cities. We have gone up, in our building, to an extent Britain has not.

Private Ownership and the Land Market

Ownership of land in the United States is widely dispersed among our citizenry, and always has been. In no small degree, this is one consequence of our generous land endowment and of our pioneering history. During our long colonial history and at least through the nineteenth century, there was much public and privately owned land on or near the frontier, available on generous terms. Some colonial land proprietors such as Lord Baltimore, sought to collect quit rents from settlers on their land, but such efforts were largely unsuccessful, primarily because land was plentiful and labour was scarce. Our homestead laws enabled a citizen to obtain 160 acres (64 ha) of land, virtually without cost, on condition that he live on it and improve it. In modern times, home ownership has been encouraged in numerous ways.

As noted, about a third of the United States is publicly owned. About 60 per cent of our seventy-five million separate households own the house or apartment which they occupy; a third of these own the structure and land without mortgage, while two-thirds of them have mortgages, sometimes large ones at high interest rates. The other side of this picture, of course, is that about 40 per cent of the households are renters; some are single-person, or two-person, households which perhaps do not wish to own a home, but a great many are

families that would like to own their own home but lack the capital for even a low down payment to get started on the home ownership ladder. Our farmers mostly own at least part of the land they farm; some rent additional land, to enlarge their operations without the necessity of investing their own capital or incurring debt for land purchase. Average farm size has more than doubled in the past thirty years; full tenancy has declined greatly among farmers, since World War II. From 1870 to 1940, we had an extensive group of tenant farmers in the South, called 'croppers'. A poor family, typically black, wholly lacking in capital, used the land, livestock, and machines of the landlord, and its own labour, to produce a crop, typically cotton. The crop was then divided between landlord and tenant. This resulted in some of our greatest poverty, in large part because the productivity of this type of farming was so low. No matter how the income was divided, there was too little of it. Mechanization of cotton growing and harvest changed all this and there are virtually no croppers today. Besides ownership of homes and farms, we have a great deal of miscellaneous ownership of rural land, often forested land, the motives for ownership often being mixed or obscure. We have perhaps two million land owners in this category.

One should not leave the impression that there are no large land ownership holdings in the United States, for there are. About sixty million acres (25×10^6 ha) of forest land are owned by a comparatively few forest industry firms, for example. The largest such firms may own as much as five million acres (2×10^6 ha) each. Oil companies typically do not own large areas of land but they obtain the oil and gas under leases that comprise very large areas. Mineral mining companies own considerable areas of land, selected because of its known or believed mineral values. Our railroads are private enterprises and some of our railroad companies own large areas of land. There are

other instances of large ownerships, even though modestly small ownerships dominate the picture in the United States. Much concern has been expressed in recent years over purchase of land in the United States by citizens of other countries, by persons of oil-rich countries in particular. Most observers judge that such foreign purchases have not yet created any serious political or national policy problems, but many persons are disturbed by the possibility of future large-scale land purchases by foreigners.

Land in all uses in the United States is freely traded among private parties, with almost no restrictions imposed by any level of government. Individuals or corporations can buy land as they choose, from willing sellers; and landowners may offer their land for sale to anyone interested to buy. The prices and the terms of sale are matters of private negotiation. Actual use of the land after purchase may be restricted through any of the limitations previously described; any knowledgeable buyer inquires as to the nature of those restrictions before he buys, of course. Some buyers buy land or obtain options on it in the expectation of being able to get the zoning changed and thereby make the land more valuable. A great deal of land in the United States is speculatively held, and speculatively bought and sold. In one sense, all land ownership is speculation, for future incomes are never known and history is replete with changes in land income and hence in land value. But I refer here to land purchase primarily for speculative gain, with the buyer not interested in use of the land for himself.

The United States has experienced persistent inflation ever since World War II. For the 1950s and most of the 1960s, the rate of upward movement of prices, and hence the rate of downward movement of the purchasing power of the dollar, was comparatively modest – of the order of 3 to 4 per cent annually. In more recent years, the rate of inflation has increased to 'double digit', or in excess of 10 per cent annually. This higher rate of

inflation, its persistence, and the expectations of continued high inflation thus engendered have had major consequences – economic, political, and social. These cannot be fully explored in this article.

But the inflation has led to a substantial reappraisal of the value of all capital goods, and most notably the value of land. While farm real estate prices had moved upward persistently since 1954, since 1972 they have leapt ahead. In the past decade or so, farmers as a group have gained more than twice as much from the increased price of their land as they have earned in net income for the whole period of years. Urban residential real estate prices have also risen sharply; the average new house in the United States sold for about \$13,200 in 1950, by 1979, the average was up to \$63,000. Such data as we have seem to indicate that the prices of older houses moved upward to the same degree. We have less information about the prices of other land, but such information as we do have suggests that the price of forest and recreation land has increased at least proportionately.

These increases in land and associated real estate prices have been accompanied by, and to some extent fuelled by, much greater proportionate increases in debt based upon the land and its improvements. In urban residential real estate, the total outstanding mortgage indebtedness has increased from \$55 billion in 1950 to \$882 billion in 1978, or by sixteen fold. Residential mortgages in the United States almost universally are for a fixed sum, at a fixed interest rate, and for a term of years nearly always exceeding twenty years. The borrower thus has an assurance of capital, which he pays off by monthly payments, for the term of the loan, at known cost. In times of continued inflation, such loans are obviously valuable in themselves. The borrower gets a substantial degree of relief from debt burden, as prices and hence wages rise – he borrows dollars of one value, he pays back dollars of another value. Something of the same thing, but in not

quite such extreme form, exists for farm real estate; farm mortgages are also at fixed amounts and fixed interest rates, some are for long periods of years but some are for shorter periods.

In some research currently under way, I have calculated that the price of houses in the United States has risen not only in proportion to the increase in the general price level, and not only to include a value for the substantial debt relief which inflation has conferred upon the borrower, but to an average amount of about \$10,000 per house in addition. I interpret the latter as the amount by which future inflation has already been incorporated into present house values. The typical homeowner thus has a substantial monetary stake in the continuance of inflation at a fairly high rate. The economic and social consequences of this expectation are very great and indeed frightening to contemplate.

The family which could buy a home may have gained from the inflationary rise in house prices; the family which lacked the capital or the credit to buy, or the income to meet mortgage payments, has lost seriously. For this class, home ownership is a mirage, constantly fading into the distance, no matter how hard one runs to catch it. Even the family which has acquired a house and a big mortgage may be in a precarious economic position, for any loss of employment, illness, or other reduction in income would leave such a family unable to carry its very heavy mortgage payments. Inflation may create capital values in its home, but these values cannot be realized until the house is sold, and in the meantime the family may experience a severe cash-flow problem.

Future Prospects

It seems highly probable that the trend in the United States during the next two or three decades, at least, will be toward greater public control over private land use. The role of public controls over private land use has

undergone major changes in the United States in the past. The earliest colonists imported ideas about land use, rights of landowners, and degrees of public control over land from the mother country, just as they imported farm machines and domestic livestock. From the earliest settlements in the early seventeenth century until perhaps the last quarter of the nineteenth century, the trend was rather steadily away from public controls over land use, toward letting the individual do as he pleased with his land.

By the beginning of the last quarter of the nineteenth century, the pendulum of freedom of private action in land use had swung to about its extreme. Fee simple ownership of land was nearly universal; the owner owned from the centre of the earth to the zenith of the sky, including the mineral rights. He could abuse his land as he chose, subject only to laws of nuisance about damages to neighbours – laws which were generally not enforced. From the extreme position, the pendulum has generally swung back. Various forms of public control over rural land use arose – weed control laws, fence laws, drainage district laws, irrigation district laws, and others, under each of which the individual landowner could be compelled to undertake actions which he might not otherwise choose to do, or some public body would go upon his land and take the necessary actions, at his expense. These laws were enacted by state legislatures, often farmer-dominated, often highly conservative in a political sense; they believed in individual freedom, but they also believed in doing what was necessary for the interest of the group.

Public controls over private land use in cities in the United States began in a significant way in New York City about the time of World War I, and the constitutionality of such public action was upheld in a landmark decision by the Supreme Court in 1926. Movement toward greater public control over private land use has not been smooth or

regular in the years since then; but, with fits and starts, and jerks and stops, it has been very great indeed. Today in the United States there still exists a basically private system of land ownership and land use, but one constrained by numerous public actions and public attitudes. There exists no single, simple, fully defined law or set of laws or conduct; instead, there is a mass of tangled controls and influences. The situation is more one of Gulliver bound to earth by myriads of strings put in place by the Lilliputians, than it is of a single yoke or pair of handcuffs.

Even the participants in the land development business are never quite certain what they can and cannot do; experimentation is constantly taking place, by private developers, by local governments striving to control local growth and development, by conservationists trying to push some government into directions sought by them, and others. Restraints come from governments, perhaps especially from the courts, from private lenders whose willingness to finance some kinds of development but not others may be decisive, from potential buyers who are unwilling to pay some kinds of costs, and from other sources.

I see no reason whatsoever to think that public influence and control over private land use will not increase further in the next two decades or longer in the United States. Every aspect of American life grows more complicated and more interrelated with other aspects of life; it is increasingly difficult for the individual to act as if he and his family were alone in the world. The precise nature of those public controls, and how they will be applied, will provide the battleground for future struggles over land planning and land use. I see no reason to believe that the private landownership system of the United States will succumb; it will operate within a new and constantly changing social and political framework.