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## Vacant Land Management: A Challenge to New York City

### Cover Page Footnote

Executive Director, Citizen's Housing and Planning Council of New York

# VACANT LAND MANAGEMENT: A CHALLENGE TO NEW YORK CITY

ROGER STARR\*

FOR the nonlawyer, the opportunity to discuss legal questions is a rare pleasure; one has been granted a license to describe defects lavishly, without being required to suggest precise corrective measures. The problem to be dealt with here is surely one of the most serious in municipal management. Vacant land—whether publicly or privately owned—is the most limited of a city's assets. Curiously, while city governments are charged with guarding their other assets most carefully, the wastage of vacant land continues apace, and no single arm of city government, at least not in New York, is expected to conserve the city's vacant land, to increase it (we will discuss how) where possible, and to assure its dedication to those purposes which will best serve the city's present and future needs.

To the nonlegal mind, busy with practical problems in municipal planning and housing policy, it would seem that legal analysis of present practice and the legislation of an improved administrative machinery deserve priority on the calendars of the profession.

What, in fact, is New York City's practice with its vacant land? In general, the city is determined to sell all of its own vacant land as quickly as possible, and to acquire nothing that is privately owned, except to satisfy an immediate need. In capsule form, one might summarize the results of this policy by pointing out that out of a total land area (including land under water, but inside the United States bulkhead lines) of 204,000 acres, less than ten per cent—approximately 23,000 acres—was estimated to be vacant in 1960.<sup>1</sup> In the face of greatly increased land needs for space-hungry automobiles, and to achieve tolerable reduction of slum overcrowding, the hour is unquestionably late. One's sense of crisis is heightened by the recollection that almost all of the land in Manhattan, at any rate, was once not only vacant, but in fact the property of the city corporation. Present Manhattanites can be grateful for Central Park and very little else in considering the land policy of their political forebears.

In 1844, the City of New York adopted an ordinance which permitted the sale of all real estate belonging to it and not in use or reserved for future public use "at public auction, at such time and on such terms" as the commissioners of the sinking fund of the city considered appropriate.<sup>2</sup> This one ordinance made possible the alienation of practically all that was left of Manhattan: almost one-seventh of the

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1. There are no official figures on vacant land acreage in the city. The figures used in this article are estimates generally considered to be reliable.

2. New York, N.Y., Ordinances, ch. IX, § 35 (1859).

island's area remained in 1844 in the city's own hands; within twenty years it had been sold. The proceeds from the land sale were used to pay the city's debt and to meet current operating expenses, but despite the sale, the city's debt after twenty years was much greater than it had been before, and the land, now in the hands of others, could no longer return to the city some measure of the increased values resulting from the demands of increased activity and population.

In exculpation of the municipal legislators of 1844, it might reasonably be pleaded that they could not foresee the immense growth of which New York would be capable. The same excuse can hardly be made today, and yet the city policy of land sale remains practically unchanged. The City of New York is still selling off at public auction all the land which it owns, provided only its government departments have no immediately foreseeable use.<sup>3</sup> In this circumstance, the city differs very little, probably, from other major American cities.

The arguments advanced by city administrations in support of this disposal policy have a familiar ring, hallowed by a hundred years of municipal misfortunes. Selling the land, the story goes, puts it back on the tax rolls. Unfortunately, the traditional under-assessment of vacant land makes it unlikely that these properties actually bring in much additional tax revenue to the city. The word "unlikely" is used advisedly, because, as a matter of fact, no one knows what revenue has actually been produced from the land sold by the city at its regular sales. The purchaser of city-owned vacant land at auction need not commit himself to improving it. He may be purchasing it for any reason whatever; the land is his, so long as he is willing to bid and able to pay a third of the purchase price in cash, provided the price is \$15,000 or more. Transactions involving less than \$5,000 must be on an all-cash basis.<sup>4</sup> If the purpose of selling the land is to increase the tax rolls, it would seem prudent to investigate the wisdom of requiring filing of plans for a legal improvement at the time of sale. The taxes levied against the improvements are more important than those levied against the land. It would probably pay the city to sell land cheap to someone who proposed an immediate improvement, rather than to sell it at a higher price to one who only wanted to speculate in vacant land on a long-term basis. This suggestion has precedents in other city regulations. In the case of zoning variances, for example, the Board of Standards and Appeals, New York's zoning review authority, may demand that the work covered in the variance be completed within a specified period of

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3. See New York, N.Y., Charter § 384(b) (Supp. 1960); New York, N.Y., Administrative Code §§ 384-5.0 to -6.0 (1957).

4. The terms and conditions of the sale are contained in the monthly notice of sale issued by the Department of Real Estate.

time from the granting of the variance.<sup>5</sup> No zoning board would grant a variance without a specific proposal before it; should the city be less cautious in disposing of its remaining lands?

The second argument usually advanced in support of the city's land disposal policy is that the city needs the money it receives from the sales. This is, in effect, a frank admission that the city is living on its capital instead of its income, for the land sold is practically irreplaceable. At the least, prudent portfolio control—which the city proudly claims in the management of its pension and retirement funds<sup>6</sup> — would imply that the consideration received from the sale of one parcel be dedicated to the acquisition of other, more urgently needed sites. There is hardly any such dedication. There is, to be sure, a “real property fund” into which proceeds from the sale of the city's real estate are paid<sup>7</sup> — except when the sale follows a tax foreclosure, as it most often does. Proceeds from tax sales had been allocated to a tax deficiency account or a general fund stabilization reserve fund<sup>8</sup>—the “rainy day fund”—but recently even this separation was done away with and the proceeds of such sales moved right into the city's general fund in order to meet an increased expense budget without a tax rise.<sup>9</sup> If the city budget cannot be made to balance without throwing in the proceeds from the sale of city property, a fiscal crisis is being postponed, but surely not averted.

A third argument, somewhat more subtle, has also been suggested in favor of the city disposal policy. The policy has been defended on the ground that the sale of vacant land by the city is helpful to the assembly of suitable building sites, because the private speculators who buy the land are able to operate more effectively than would a city department.

Unfortunately, at this writing the city's records of ultimate re-use of the vacant land sold at its auctions are too fragmentary either to support or to contradict the theory. On the whole, it seems rather a vague suggestion on which to base the city's land policy, and, if it works out in practice that these sales do assist in building site assembly, one should know what the cost to the city is. Perhaps the same or even better results could be obtained by intelligent land management in the hands of a competent municipal agency.

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5. New York, N.Y., Zoning Resolution, As Amended § 22-A (1954).

6. See the provisions regarding various pension systems in New York, N.Y., Administrative Code G41-1.0 to -67.0 (1957), as amended, New York, N.Y., Administrative Code §§ G41-3, 1 to -53.1 (Supp. 1960).

7. New York, N.Y., Charter § 254 (1957).

8. New York, N.Y., Charter §§ 131-32 (1957), as amended, New York, N.Y., Charter § 132 (Supp. 1960).

9. New York, N.Y., Local Law 80, Dec. 16, 1960, amended the charter and the Administrative Code to allow the diversion to the general fund of about 75% of the future proceeds of public auction sales of properties seized for taxes. It was estimated that \$40,000,000 to \$60,000,000 would be thus diverted. *N.Y. Times*, Dec. 17, 1960, p. 30, col. 3.

The most striking feature of the city government's control over its own vacant land is its haphazardness.

The Department of Real Estate, which conducts the sale,<sup>10</sup> acts, in effect, as a broker for the city. Its assignment is the disposal of surplus property, and like any broker whose income depends on volume, it would appear to favor increased sales. The sales are restricted only by the requirement that all property must be screened by the individual departments of the city against their foreseeable requirements.<sup>11</sup> If there is, indeed, good reason for selling the land for which no foreseeable need is apparent, this reservation system appears somewhat casual. A department with an ambitious though unrealistic program might be able to prevent the sale of land against the city's best interest.

There exists, in fact, a certain amount of bargaining back and forth between the Real Estate Department, charged with the sale and not unnaturally taking credit for the size of the receipts, and the individual departments. The Planning Commission, when it is attempting to assemble a large tract of land for some special purpose, such as an industrial park, will actively enter into the process of negotiation with individual departments, but these are unusual and exceptional cases, it would appear. In general, vacant land is sold when no department has reserved it, and the reservations themselves are seldom challenged. The city follows a policy of land disposal, but follows it with something less than enthusiasm, and follows it for reasons that are not themselves related to the question of land.

Yet beyond question the City of New York has reached a situation of extreme stringency with regard to its vacant land. The Sanborn Map Company directly counted 30,000 vacant acres in the city in 1955. In 1948, there were about 40,000 vacant acres in the city. It is therefore a reasonable guess that the city, through new construction and the dedication of park lands, has consumed almost one-half of the land in its boundaries in the past few years.

Of course, by no means all of the land that was vacant in 1955 or 1948 was city-owned. To control the consumption of privately owned vacant land, New York must rely primarily on zoning. The new zoning resolution recently adopted by the city government<sup>12</sup> provides for strict controls over residential densities, and in general, limits the development of vacant land quite drastically. While the Planning Commission has not said so, it would appear that it hopes by this zoning to cut down the speculation in land in the underdeveloped sections of the city. The commission has announced that it will be flexible in permitting rezoning. One may imagine that, although the new zoning is initially restrictive, it

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10. New York, N.Y., Charter § 1152 (Supp. 1960).

11. New York, N.Y., Board of Estimate Cal. No. 260(B), Jan. 8, 1959.

12. New York, N.Y., Zoning Resolution, Dec. 15, 1960.

will find ways to admit greater residential density in the future, under appropriate circumstances.

Zoning, as a regulative device for the development of vacant land, must always steer a narrow course between over-restriction, with resulting land under-utilization on the one hand, and insufficient restriction which permits land wastage through poor development on the other. In the public hearings that are part of the rezoning process, it is unfortunate that no party represents the city's need to get the maximum benefit from its land resources.

The disposal of city-owned real property by public auction, in which the fee is sold with no special restriction as to the land use beyond what the zoning resolution provides, is a dramatic demonstration of the city's insufficient land policy. It is only one such demonstration, and there are other city acts which show a similar disregard of the critical nature of land supply.

Obviously, at a time of almost no housing vacancy, unoccupied land is of great importance, as the new housing for which it provides space constitutes entirely a net gain to the city's housing inventory. Vacant land is the key which opens the door to possible redevelopment of under-developed or blighted sites. A land policy must promise, first of all, the assembly of suitable construction sites. Either through holding vacant land which is suitable for redevelopment, or through a process of barter, or sale-and-purchase, the city's land-holding portfolio could be creatively enlarged and made more rewarding.

A municipal land policy should also be calculated to increase the supply of viable building sites. Several important aspects of this question are concealed within the vacant land statistics. The estimate of 23,000 present vacant acres includes the land under water adjacent to vacant uplands. Here, again, one has only the sketchiest assurance that a city policy has been formulated and is in process of execution for the filling-in of such marginal lands. The land-fill operations of the city are conducted by the Department of Sanitation in conjunction with the Parks Department; this collaboration has used solid garbage to produce a usable recreational area on the shores of Jamaica Bay, along the edges of Staten Island, on both the Arthur Kill and Lower Bay shores, and on the East River in the Bronx. Floyd Bennett Field, an airfield in Brooklyn, stands on land that was reclaimed similarly, and suction dredging of sand was responsible for raising much of the present site of Idlewild International Airport to its present elevation and grade. In the hands of a competent city agency, charged primarily with the development of the city's land resources, fill operations would play an important part, and the reinvestment of the proceeds from land sales into raising the grade and elevation of lands under water but within the federal bulkhead lines might be extremely profitable. Alternatively, the policy of selling lands under water

should be scanned to see whether the obligation to raise the land within the bulkhead lines to a usable grade should not be imposed on the new owner, at least in appropriate circumstances.

A second source of building and park sites is concealed within the vacant land estimates. The figures quoted are exclusive of streets, whether these are real or merely mapped and not even acquired by the city. Anyone who has explored the vacant or underdeveloped sections of the city, map in hand, is likely to be startled by the number of streets which appear on the map but are not to be found on the ground. The streets were laid out on the official city map with the approval of the Planning Commission, but at the instance of the Borough Presidents' offices.<sup>13</sup> The acquisition of title and the true opening of the street are at the option of the Borough Presidents,<sup>14</sup> and the de-mapping is an obscure process. There is ample reason to question the wisdom of the grid system employed in the past, and the need for all of the streets that appear on the maps; the automobile has characteristically been given more than its due in the city. Any saving in the mapping of streets means a direct addition to the supply of vacant land. Nothing may be built in the bed of a mapped street to which the city has not taken title. Despite the obvious attraction of a policy of minimizing the areas of such streets, no city agency is charged with a positive responsibility for cutting down the waste implicit in these unreal mappings.

A third source of additional vacant land is to be found in the systematic exploitation of the possibilities of superimposing one land use atop another. The use of air rights over low level land uses is a prime example of this possibility. A dramatic evidence of private imagination in the conservation of air rights and their subsequent exploitation is to be found above the East River Drive in Manhattan. When land for the Drive was originally acquired from private owners back in the 1930's, one owner, the Phipps Estates, Inc., retained by contract the air rights above the land that it was deeding to the city. These air rights were later sold for private development, and two substantial cooperative apartments have been constructed in the air rights, straddling the highway.

Other projects of considerable size have been announced for the air rights over the Manhattan approaches to the George Washington Bridge,<sup>15</sup>

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13. New York, N.Y., Charter § 202 (1957).

14. See New York, N.Y., Charter §§ 291-301, (1957), as amended, New York, N.Y., Charter § 296 (Supp. 1960).

15. The air rights to a two-block area at the Manhattan approach were sold at public auction by the Department of Real Estate for \$1,065,000. The rights had been owned by the Port of New York Authority, but, according to the Commissioner of the Department of Real Estate, "The Port Authority decided the air rights were of no use" and sold them to the city for \$1. The planned apartments will rise from a platform spanning the area. N.Y. Times, Aug. 18, 1960, p. 1, col. 4. The high price led to later speculation that the rights might be tax-exempt. Air rights are normally taxed indirectly by an increased



and the Mott Haven (Bronx) yards of the New York Central Railroad.<sup>16</sup> As these words are written, it is rumored that a similar project will be constructed above the subway yards in upper Manhattan on the Harlem River.

The possible usefulness of air rights is, however, subject to difficulties imposed by present legal restrictions and administrative practices. When the proposal to erect middle income housing above the Port of New York Authority approachway to the George Washington Bridge was first made, the city considered selling the air rights for a nominal one dollar. The proposed housing development was to be a limited-profit housing company cooperative, financed by a city loan.<sup>17</sup> The greater the sum of money received by the city for the air rights, the larger the city loan would have to be, the higher the rents. The advantage to the city in achieving a high sales price for the rights must be weighed against the amount of city credit that would have to be extended to provide the financing of that very purchase price. An even more compelling reason for questioning the sales policy would be that obviously the higher the sales price for the rights, the higher the rents or carrying charges, and the less the new housing would cater to the income levels most in need of it. But legal uncertainties which seem to insist on a public auction for the disposal of city-owned property (although the Public Housing Law specifically authorizes municipalities to give land to limited-profit housing companies on whatever terms may be appropriate)<sup>18</sup> prevented the best use of the air rights. The price at the public auction soared to \$1,065,000. Naturally, prospective sponsors were able to frame their bids in the knowledge that the higher land price would mean, in the main, a higher city loan, and, since the sponsor's profit is controlled as a percentage of the total project cost, a higher possible profit. Instead of serving the lowest possible income

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assessment on the land below, but in this case the land below is out of the city's jurisdiction and the Port Authority is itself tax-exempt. *N.Y. Times*, Sept. 25, 1960, § 8, p. 1, col. 6.

16. The railroad yards are forty feet above street level. A \$95,000,000 middle-income cooperative apartment development—eventually there will be twenty-three buildings, each twenty stories high—will be erected on a concrete platform spanning the tracks and flush with the street. The concrete base will be supported by columns sunk between the tracks below. The Amalgamated Meat Cutters and Butchers Workmen of North America, sponsor of the project, leased the air rights over the forty-acre site from the New York Central System. The lease is for sixty years, with an option for a forty-year renewal, the railroad to receive \$750,000 a year in rent when the development is completed. *N.Y. Times*, May 26, 1960, p. 1, col. 4.

17. The Limited-Profit Housing Companies Law, *N.Y. Pub. Housing Law* §§ 301-24, aids the development of low-income housing projects by making low-interest mortgage loans available to private builders forming a company under the act. The act provides for two kinds of programs, one financed by state loans, § 311, and the other financed by municipal loans, § 312.

18. *N.Y. Pub. Housing Law* §§ 120, 125(3).

group—which is the objective of the Limited Profit Housing Company provisions of the New York State Public Housing Law<sup>19</sup>—this handling of this potential land site made it available to the highest possible income group. The only limitation on the bidding was the possibility of getting the cost of the future dwelling units so high that no one would buy them from the sponsor.

Finally, any program to maximize land resources must concern itself also with the reviewing of all legal restrictions on the use of land which tend to limit its availability. For example, the new Zoning Resolution of New York City imposes stringent parking requirements on residential properties, especially where these are mapped in outlying sections of the city. A parking space must be provided for every dwelling unit in all the residential zones up to the R4 zone.<sup>20</sup> Parking or garage space must be provided for eighty-five per cent of the units in R5.<sup>21</sup> With only one hundred spaces possible on an acre, this would mean that approximately half of a building lot in this zoning district would be taken up with parking spaces. Obviously, some form of multi-story garage is required, but the Multiple Dwelling Law, a state instrument, requires the construction of fully-enclosed garages in connection with any multiple dwelling,<sup>22</sup> and the cost of these is exorbitant. It is clear that if we are to get the maximum benefit from land, some method (a number have been suggested by prominent architects) must be found to provide multi-story parking that will be both attractive and cheap, and that will save a much larger portion of the land for recreation and usable open space.

It is clear that the present inchoate state of city land policy means that no single board, department or authority will take the lead in providing this type of legal relief, as well as the many others that must be obtained in order to simplify constructive land use.

It is the writer's contention that a land policy must be developed and executed. Essentially, the city's vacant land is a resource to be conserved and managed in much the way that the trustees of the city's pension funds manage the accumulated moneys. A way must be found to entrust the city's land management, including, but not limited to, the development of the city's own portfolio of owned land, to a board of trustees, or an authority, whose members would include at least the Commissioner of Real Estate and the Chairman of the City Planning Commission. Constitution of a new body does not, of course, guarantee the solution of every problem, but without the concentration of responsibility for stretching land resources, the present indeterminate pattern of wastage and unconcern will surely continue.

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19. N.Y. Pub. Housing Law §§ 302.

20. New York, N.Y., Zoning Resolution § 25-23, Dec. 15, 1960.

21. *Ibid.*

22. N.Y. Mult. Dwelling Law § 60.