

Providing Land for Urban Development: Issues, Policies and Strategies for Improving Access, Tenure and Regulation of Land Development and Use

David Mammen*

Introduction

Thank you for the invitation to participate in this international symposium.

I would like to begin by introducing the work of the Institute of Public Administration (IPA), and in particular our research and training activities related to urban land use. In addition to serving as President of IPA I am also Chair of the International Division of the American Planning Association (APA). In both capacities I have been deeply involved in the Habitat II debate. I would like to discuss several issues related to land use in developing countries in the context of the recently held Habitat II conference. Some of these issues are also on the agenda in the U.S., and I will conclude with remarks concerning the U.S. situation.

About the Institute of Public Administration

The Institute of Public Administration (IPA) is an independent nonprofit research institute headquartered in New York City and operating worldwide. IPA was organized in New York City in 1906 as the Bureau of Municipal Research with the purpose of introducing to the field of government the then-developing concepts of scientific management. The services provided for New York City by the Bureau staff stimulated a demand for government research which has expanded until the present day. IPA established the Training School for Public Service in 1911 and granted the first advanced degrees in Public Administration in the nation. Later, the Training School was moved to Syracuse University where it became the Maxwell Graduate School of Citizenship and Public Affairs.

Beginning in the late 1950s, the expansion of overseas projects significantly increased IPA's international role. IPA has operated in all the major regions of the world, and has helped to establish public administration institutes in several other countries. Today,

* President, Institute of Public Administration, New York City

IPA has projects in Asia, Latin America, Central and Eastern Europe, the newly independent states of the former Soviet Union, and the United States.

IPA's Activities Related to Urban Land Use

IPA's program of research, technical assistance and training includes several activities related to urban land use. With support from the Ford Foundation, an international team directed by IPA worked for four years (1987-1990) with scholars from the Chinese Academy of Social Sciences (CASS) on studies related to urban land use and management in China. IPA experts visited China on several occasions to jointly conduct field research in several cities in China, including Xiamen, Guangzhou, Shenzhen, Wuhan, Zhejiang Province, and cities and towns in China's northwest region. IPA also hosted studies in the U.S. by Chinese scholars and organized study tours to Japan, Hong Kong, Singapore, and Sweden for comparative study. The project was guided by an advisory committee which included the Vice Minister of Construction, the Director (Minister) of the State Land Administration, the Vice President of CASS, and two leading reform economists from the State Council. The final report of the study, with recommendations to guide future reforms, was presented at an international conference held in Beijing and published in Chinese and English; the book is available from IPA.

IPA has also organized study tours to Japan and the U.S. for Chinese urban planners as part of an on-going project related to China's transition to a "socialist market economy." The study tours have examined issues of land use, infrastructure development, and local economic development. In the U.S., the Chinese have studied growth management programs in several states, including Oregon. The project is supported by a grant to IPA from Japan Foundation Center for Global Partnership.

In September 1995, the Chinese State Land Administration sent a high-level delegation of provincial officials to IPA as part of a two-week study tour to the U.S. and Canada. IPA organized presentations, discussions, and site visits concerned with urban land use and development. Participants represented such provinces as Yunnan, Ningxia, Shaanxi, Guangdong, and Hainan among others.

IPA has also been assisting the Russian Federation in training related to the introduction of urban land use and real estate markets. During 1996, IPA has managed three study tours for government officials and real estate professionals from several cities in Russia, with funding from the U.S. government's foreign aid program. The participants studied urban land use and development in a market-based economy and the interaction of local government with the private real estate market in the U.S. To compare three different real estate markets, the groups traveled to New York, Washington, DC, and Denver, Colorado. We anticipate being asked to organize more of these study tours in

the coming months.

IPA is also active in Latin America, and a member of our senior staff participated in a regional conference on Urban Land Markets and Land Information Systems in Latin America and the Caribbean in November 1994. More than 60 participants from 12 Latin America countries attended the seminar convened by the Lincoln Institute of Land Policy, and co-sponsored by the Havana-based Group for the Integral Development of the Capital (GDIC), the Latin America regional office of the Urban Management Program, and Inter-American Planning Society (SIAP).

The objective of the event was to further thinking and dialogue at the regional level regarding the evolution and functioning of land markets, to review research on how market forces express themselves in diverse contexts, and to examine available policy options for urban land administration and management. In the Latin American context, land market mechanisms associated with developed economies are highly deficient: large landowners, and often state agencies, control or even monopolize local land markets, and squatter communities predominate. In the case of Cuba, the land market is altogether absent. As Cuba struggles economically in the wake of the disintegration of the socialist bloc, land managers and policy-makers are examining how market mechanisms might be used to ensure a more efficient and equitable allocation of resources. This seminar provided a forum for the exchange of experiences and lessons from within the region.

During the week-long event, the focus of discussion and debate was how to make land markets more equitable and transparent, and how these could contribute to better urban management in general. Participants reviewed alternative Land Information Systems for local and regional governments, exploring various options available to help determine the effect of different land use strategies and tax policies. Specific topics discussed included: how to determine reasonable property values, how these could be monitored and updated over time; how changes in land use and land ownership could be recorded and amply shared; and how property markets could or should be regulated to capture fiscal benefits for government.

Emerging Principles and Policies from Vancouver to Istanbul

For the past two years IPA has been active in the preparations for Habitat II, The Second U.N. Conference on Human Settlements, which was held in Istanbul in June 1996. Habitat II was convened with two objectives in mind. First, in the long term, to arrest the deterioration of global human settlement conditions and ultimately create the conditions for achieving improvements in the living environment of all people on a sustainable basis; second, to adopt a general statement of principles and commitments

and formulate a related Global Plan of Action capable of guiding national and international efforts through the first two decades of the next century.

With its focus on urban problems, Habitat II was called "The City Summit" by U.N. Secretary General Boutros Ghali. But Habitat II was also seen as the culmination of a series of UN conferences, including Rio, Cairo, Beijing, Copenhagen, which tried to weave together several themes related to sustainable development. To better understand these relationships, in 1995 the UN Centre for Human Settlements asked IPA to undertake a study of all of the major conferences held since Habitat II (in Vancouver in 1976), to examine how the meetings had addressed Habitat-related themes. Our report was titled "From Vancouver to Istanbul: Persistent Problems, Common Goals, and Shifting Approaches". The UN Centre for Human Settlements praised the report, noting that "The implication of your findings has been that Habitat II became a conference that integrated many of the principles and commitments made at other UN conferences." The report noted that "Just as the world has changed since 1976, experience has brought about changes in ideas and approaches to improving living conditions in human settlements. The changes in human settlement strategies are in many ways a response to demographic, economic, technological, political and social changes that have occurred during the past 20 years:

- World population has doubled from 3 to 6 billion;
- Urban population has increased even more rapidly, at a rate 2.5 times faster than rural areas;
- Despite vast increases in wealth and national GDPs in some countries, the proportion of people below poverty levels has continued to increase. The World Bank estimates that, today at least 600 million people in human settlements live in health and life-threatening conditions. Up to one-third or more of urban populations live in substandard housing;
- Environmental degradation has increased and received worldwide concern and actions to mitigate impacts;
- Transport accounts for more than 50 percent of the world's fossil fuel consumption, causing greenhouse effects and traffic congestion and health problems in urban areas;
- The blossoming of the information age has informed the world of problems and potentials for improving living standards;

-Mega-cities have become major economic centers of trade and commerce, negotiating directly with each other."

Problems and Obstacles to Appropriate Urban Development

Responding to these changes, delegates and NGOs gathered in Istanbul had a complex agenda of issues related to the difficulties experienced particularly by the urban poor in gaining access to land for shelter and in gaining secure to land they have managed to acquire; to finance the construction of dwellings; and to secure essential public services. IPA categorized these issues as follows:

a) Access to land: Although only a fraction of national land resources are needed for urban development, the supply near and accessible to urban areas is very limited in most developing countries. Because much of the accessible and buildable land within and adjacent to urban areas is privately owned, it is frequently held by wealthy investors and is only available at speculative prices. As a result, the urban land market does not function effectively for the majority of people seeking home sites. As a result, most of the increasing flow of poor migrants to urban areas have only two alternatives: to move into over-crowded slums or invade private or public lands and build their own shelters.

In practice, the invasion process is highly organized involving criminal elements who (perhaps with the owners' sanction) charge migrants for permission and protection of their illegal occupation of such sites. Although in time the buildings built by squatters become quite substantial, their sites usually have inadequate access, and no utilities or public services including police or fire protection. Local governments efforts to prevent invasions or clear such areas have been unsuccessful and current practice favors recognition of their permanence and regularization of layouts and gradual provision of access and utilities supported by user charges.

b) Security of tenure: Legal systems in most developing countries were developed in colonial times and are designed for wealthier societies. As a result, establishment of clear title and fee ownership is beyond the financial capacity of most people, and particularly the poor occupants of informal settlements. They are therefore subject to eviction by property owners or the government at any time. Procedures for securing title are also complex, costly, time consuming and subject to corrupt practices.

c) Inappropriate norms and standards: Legal requirements in development controls and regulations such as zoning, land subdivision and building codes are frequently too strict or excessive in relation to realistic needs and capacities of the population; making land development and construction too expensive.

Fees for permits may be excessive, inviting corruption (Note: the New Delhi Declaration contains specific positive recommendations on land planning policies and regulations)

d) Government responsibilities, resources and management:

-Over-centralization of government powers and resources: In many countries the national government is the only effective government which collects taxes, adopts laws, administers programs and even appoints mayors and other local officials. Cities and other local units of government have little power and very limited resources.

-Inefficient government management of land development and occupancy: Lack of, or inappropriate policies; Lack of transparency in regulations and administration; Time consuming and corrupt practices by responsible officials.

-Inadequate technology: No, or inappropriate land planning and development controls. No land title registry or cadastral systems. No land taxation or collection systems. Inadequately trained personnel.

e) Lack of community participation: People, and particularly those in poor communities are given little or no opportunities to participate in government planning affecting their communities, or in the implementation of improvement programs.

f) Lack of cooperation with private sector: Few opportunities are offered by government for private developers and builders to participate in planning and implementing public development projects.

g) Financial systems and institutions deficient in support of urban development: Credit for land purchase or dwelling construction is unavailable to the poor who lack tenure; and where it is available, down-payments and interest rates are excessive.

h) Inequitable treatment of woman, minorities and vulnerable groups: In many countries, women may not hold title to land or participate in political, social economic life despite their dominant role in home-making and the social structure of communities. Problems also exist in excluding and discriminating against minorities, the elderly and disabled, refugees and indigenous people.

Preparing for the Debate in Istanbul

Major emphasis was given to the issue of access to land and security of tenure in the Global Plan of Action (GPA) adopted at the Habitat II Conference in Istanbul, June

1996. In introducing proposed actions for "Ensuring access to land" the GPA states that "Access to land and security of tenure are strategic prerequisites for the provision of adequate shelter for all and for the development of sustainable settlements" -the central themes of the entire conference.

The variety and complexity of land issues is indicated by the 39 actions proposed in the GPA which call for reforms affecting basic economic and legal systems, changes in government responsibilities, improved management, and new approaches to the involvement of social communities and the private sector. The GPA proposals reflect the intractability of the issues and the lack of progress despite many past efforts starting with the Stockholm Conference in 1972, followed by the Vancouver declaration in 1976 and the reforms called for in Chapter 7 of Agenda 21 issued at the World Environment Conference in Rio 1992.

Reporting on progress towards the aims for human settlements expressed in Agenda 21, the UN Center for Human Settlements (UNCHS) reported to the Commission on Sustainable Development (CSD) in March 1994 that "there is not very much movement in the area of land management...the process of urban expansion is particularly chaotic, and often takes place outside any legal framework and jurisdiction, with immense negative ecological, social and economic consequences...What has hindered it so far is the political sensitivity of the land issue. Control over land tenure is, after all, still the basis of power in many societies." Nevertheless, the UNCHS reported to the CSD that the UN system continues to assist governments of developing countries in instituting measures to "increase the supply of land, improve administrative and technical capacities for land registration, and legal reforms to promote the efficiency of land markets".

To provide background on land issues for the Habitat II Conference, a Global Conference on "Access to Land and Security of Tenure" was held in New Delhi in January 1996 sponsored by a number of governments and international organizations representing the public, non-government and private sectors. This conference drew on the findings of six regional conferences on land issues held during 1995 and adopted the "New Delhi Declaration" containing 60 recommendations grouped under the following five topics, "chosen because of the place they hold in the forefront of concerns about urban land":

1. Decentralization and Local Government
2. Informal Land Development
3. Community Sector Participation in Tenure Regularization and Land Development
4. Formal Private Sector Participation Including Public-Private Partnerships
5. Norms, Standards and Procedures for Facilitating Implementation and Financing

The New Delhi Declaration is very well organized and completely addresses the real land issues confronting urban government in developing countries. It was clearly prepared by professionals in the field, while the Habitat II GPA is the work of a large committee composed mainly of diplomats with little direct knowledge and experience in urban development. For example, the GPA section on land issues contains hardly any mention of how to deal with the problems and potentials of informal land development which is the predominant type of land development in most LDCs. The recommendations in the GPA do not represent a balanced response to all land issues and are not organized or grouped by subject as in New Delhi. Many are very cryptic, sometimes not clear, and are full of repetitions. Nevertheless, they do contain much guidance for LDCs if supplemented by the New Delhi Declaration.

The habitat II Global Plan of Action

The Global Plan of Action enacted in Istanbul proposed a series of 39 actions for national and local governments based on the following principles and policies. (One might observe that most of these do not call for radical reforms and, for the most part, suggest more efficient and equitable administration of existing laws and procedures):

1. Rather than proposing limitations on private land ownership as adopted in Vancouver, GPA calls for making the land market more efficient and proposes partnerships with the private sector in urban development programs.

2. A stronger and more urgent call for involving people in poor communities in the planning and implementation of projects for shelter and community environmental improvement.

3. Recognizing that central governments have not adequately addressed urban problems, the GPA recommends decentralization of development planning and implementation powers to local authorities, and the assignment of adequate resources to carry out these management functions.

4. A new approach recognizes the important role of the informal sector in providing both shelter and employment. Instead of evicting squatters and demolishing their homes, governments are urged to see their value and to assist in making them permanent by providing land tenure and public services.

5. The need for improved skills, capacities and technology for land management is recognized.

6. Major emphasis is given to achievement of environmental sustainability in urban

development and management.

7. Increased concern for equity, particularly in the empowerment of women in urban development processes.

The 39 proposed actions for ensuring access to land in the GPA can be summarized under the following seven subjects:

- Development Policies
- Legal Frameworks
- Land Markets
- Management and Technology
- Partnerships and Participation
- Financial Resources
- Equity Issues

a. Development policies

- Reduce pressures for urban sprawl by permitting increased development densities in areas served by infrastructure.

- Promote rural development to reduce urban migration by increasing access to land, encouraging agricultural settlement and small and medium urban centers.

- Adopt sustainable land use policies, balancing the need for urban development with environmental protection.

- Reserve open spaces for public parks, recreation areas and private gardens.

b. Legal Frameworks

- Enact clear and equitable property laws, specifying land ownership rights and limitations, and defining various levels of tenure.

- Adopt land development regulations and building codes appropriate to indigenous societies, including simple and clear procedures for development and building approval.

- Ensure simple procedures for the transfer of ownership and conversion of land use.

c. Land Markets

- Promote the efficient and equitable functioning of the market for vacant land in

and around urban areas by employing fiscal incentives and other measures, and legitimizing diverse land delivery mechanisms. (Implied, but not stated specifically is the facilitating and legitimizing of informal or squatter settlement on private lands)

-Adopt instruments to capture gains in land value due to public investment in infrastructure.

d. Management and Technology

-Decentralize land management responsibilities to local authorities, providing adequate resources to assure efficient and equitable administration.

-Prepare comprehensive inventories of land use and ownership with cadastral and registration systems to support and regularize property value assessments and tax systems.

e. Partnerships and Participation

-Form and organize partnerships with the private formal and informal sectors and non-governmental community groups for cooperating in shelter improvement projects.

-Develop and implement measures to enhance non-governmental and community capabilities in order for them to actively participate in land and affordable shelter development projects.

f. Finance

-Provide incentives to lending institutions to increase savings by the poor and to offer credit to low and moderate income individuals and community collectives at affordable rates for land purchase and shelter improvements.

g. Equity Issues

(Note: equity issues are stressed in all action proposals)

-Eradicate legal and social barriers to equitable land access and tenure by adopting measures ensuring that women and other vulnerable groups have equal tenure rights and access to credit for buying, leasing or renting land and shelter.

-Address cultural, ethnic, religious and other social biases and prejudices that lead to segregation and exclusion by education and training for peaceful conflict resolution.

The Situation in the United States

As noted above, the Vancouver declaration differs from the Habitat II GPA in proposing limitations on private land ownership rights, stating that "Private land ownership is also a principal instrument of accumulation and concentration of wealth and therefore contributes to social injustice; if unchecked, it may become a major obstacle in the planning and implementation of development schemes". However, both the Vancouver and Istanbul documents support the use of taxation and other instruments to capture gains in land value, or as stated in Vancouver: "the unearned increment resulting from changes in use, or public investment or decisions"

An interesting contrast to these positions on private ownership rights has developed recently in recent state legislation and Federal court decisions in the United States. Rather than placing limitations in private ownership rights, these actions would place limitations on the power of governments to enact laws or regulations which limit private land use without compensating owners for the resulting diminishment in the value of their property. Although not yet applied to zoning regulations which control the use and occupancy of land, such laws and court decisions have been applied in the case of environmental regulations which place limitations on the use of wetlands or the habitats of endangered animal species. However, there is concern among the planning profession that if the concept of compensation for partial takings of land value were upheld, it would apply equally to zoning, unless specifically exempted.

Although there has been a lot of debate on the issues, no objective evaluations of the experience with these laws is available for the states which have enacted takings acts. The APA, representing the planning profession, has actively opposed all takings legislation at the state and federal levels, and the issues have been actively debated in the Planning Magazine (attached). John Humbach, law professor at Pace Univ. in NY states that "These laws represent a challenge to the basic validity of land use planning...If the goals of the takings advocates are realized, we will see a return to a system of land use allocation by purely market forces, making planning obsolete." Harvard Professor Jerold Kayden adds that "For compensation laws to make sense, they should limit gain as well as loss, compensating for the latter, recapturing the former. Michael Berger, California lawyer says: "Of course it's appropriate...Congress should legislate fairness by declaring that property owners must be compensated...I can't imagine why anyone would think otherwise".

Opposition to takings legislation by planners is based on the fear expressed by John Humbach, that it threatens all land use regulation, and secondly that it will be very costly, requiring complex and debatable assessment of the amount of reduced value.

This brings to mind the experience in England with the Planning Act of 1946 which "purchased" (or took) the future value of all land with a global fund of (I think) 25 million pounds which was to be allocated on the basis of adjudicated claims by individual owners. Then, since the future value had been taken, an owner had to pay a "development charge" to gain approval of a use higher than its present value. In practice, the global fund was never paid and so much difficulty and controversy was involved in assessing the development charges that the Conservative party rescinded the entire act when they came into power during the 1950s. This is likely to be the experience with takings legislation.

What is now happening is that local, state and federal governments and their planning and legal advisers are being very cautious in enacting or promulgating any laws or regulations which are likely to incur requests for compensation, thereby hoping to avoid the issue.

Conclusion

IPA is committed to its own "plan of action", to help communicate and implement the Habitat II Global Plan of Action. During Habitat II, IPA convened a roundtable discussion on governance issues related to "best practices"; an article on this topic will appear in the next issue of our newsletter, *The IPA Report*. We organized a public forum on Habitat II in New York City on July 10. Speakers included a member of the U.S. delegation, an official of the U.N. Center for Human Settlements, and NGO representatives.

As a follow-up to Habitat II, IPA has submitted a project proposal on Leadership Training to international organizations to elicit their support for a program to assist local government officials and people living in slums and informal settlements in organizing cooperative activities for environmental improvements. IPA is also formulating a study of Living Conditions of Older People in Urban Areas of Selected Developing Countries. The study would be directed by IPA Senior Associate Richard May, author of the 1982 report *Human Settlements and the Aging*, and would culminate in a report for broad dissemination during the U.N. International Year of Older Persons in 1999.

David Mammen is President of the Institute of Public Administration. He joined IPA in 1979 after receiving a master's degree in city planning from the University of Pennsylvania, and was appointed President in 1994. He serves as Chair of the International Division of the American Planning Association.

IPA Senior Associate Richard May assisted Mr. Mammen in the preparation of this paper.