

Mark
You might find the
rights ~~to~~ obligation argument
used in this brief interesting
— also see "Owner obligation see ASL
a Tax" discussion (p 5 of Addendum)
Rory Stone

SUBMISSION

TO

THE

ALBERTA

LAND USE FORUM

BY

THE SCHOOL OF ECONOMIC SCIENCE

AND

SOCIAL PHILOSOPHY

ATTENTION: DR. V. A. WOOD, CHAIRMAN

MARCH 4, 1975
CALGARY

While it is apparent that the provincial government does not feel that there is a crisis surrounding the LAND question in Alberta today, it has shown foresight in appointing this Forum to gather recommendations for future legislative considerations. Clearly it would be desirable to avoid the type of problems that have developed in other areas, which have the potential of intensifying into serious issues here.

We Albertans have been lucky - so far. We are young and we still have a chance to abort the coming crisis, but our community is ageing at an accelerating pace.

While our concern covers the whole area of "LAND USE", we wish to direct our remarks in this submission to those special circumstances surrounding these LANDS that have already been alienated from the Crown.

We have but one recommendation for change in the LAND stewardship policy of the Province. We urge you to follow our analysis of the forces leading to LAND related problems that are so disturbing other legislative bodies in Europe and North America.

We are already becoming aware of such undesirable phenomena as urban sprawl, corporation farms, urban blight, extreme population concentration, farmland out of use, very high cost of residential building lots, foreign ownership, inability of young farmers to acquire land, perhaps political corruption, and the frustration of planners when conflicts about LAND USE arise between private "owners" and public programs.

It is very obvious that our policies have to be redirected.

Undoubtedly you have already received suggestions, ranging all the way from "the government should get completely out of the LAND business" to "LAND USE should be completely regulated by government".

We trust that you will appreciate that the course of action we suggest is neither of the extremes of unrestricted laissez-faire freedom of USE or the complete nationalization and public control of all LANDS.

Your various Technical and Summary Reports were valuable aids in the preparation of our argument. We have included several direct quotations - particularly from Technical Reports #4, "Urban Residential Land Development" and #9, "LAND Ownership Rights".

The statement in the conclusion of Report #9

"any real control of land use and development must tackle the financial problem of 'betterment' due to community action, if it is to be effective at all."

is clearly correct and it has the message that we want to intensify in your minds with our presentation today.

Historically, our approach in Alberta has been to grant ownership rights in LAND to anyone willing to carry out minimum homestead requirements. The decisions of the descendants of these original settlers, about the USE to which they put their LAND, today may or may not be compatible with the desires of the community around them. Some persons like to believe that if they own a "freehold" property in LAND, they should be able to do with it as they wish, but in our modern Western society, such is not the case. As an area becomes populated, some inherent limitations in the USE of real property emerges for the mutual protection of the owners, and the public at large.

Nevertheless, in Alberta today some basic LAND USE facts are:

- LAND ownership rights, except in pressing circumstances, include the power to control how, and for what purpose the LAND or space will be USED.
- Except in rare cases, the preferences of the titleholder as to USE are motivated by financial considerations.
- Maximum financial gain to the landholder is not always obtained by maximizing production on or from the LAND.
- Financial value, or monetary price, is dependent on the future benefits that the titleholder can expect to receive. These benefits may be in the form of values from production or values from monopoly rights that the title bestows. The present worth of these future benefits is what determines the market price.

These facts often add up to conflict and awkward social problems.

Obviously our present methods of regulation and planning without control will not be effective. A better way to control LAND USE is needed.

It is difficult to examine traditions objectively, but we would like to trace the development of the important economic relationships that have led to today's dilemmas.

History documents that grants of LAND rights have always been made subject to certain terms and conditions. Since feudal times, it has been recognized that holding of LAND is a reciprocal relationship of rights and duties.

Under this system, which is the basis of our current practices, all LAND was held of the King (who represented the community as a whole) in return for certain services and obligations. That is, there was a neat and logical balance between the privilege of rights in LAND and obligations.

Technical Report #9, in reviewing these relationships states: "The conditions of the tenure, or the burdens placed on the LAND were called 'incidents' and included fealty, homage, wardship, marriage, relief, primer seisin, aids, fines for alienation and escheat. Various incidents and other services attached to different tenures of which there were the 'free' tenures, namely military tenures, socage tenure, burgage tenure, gavelkind, and frankalmoign, and also the 'unfree' tenures, called tenures in villeinage. Each of these tenures carried its own special obligations."

Such feudal duties seemed too onerous, however, and they were eased somewhat by the Magna Carta and other subsequent modifications.

The increasing use of money and the efficiency of the payment of money to the Lord rather than complicated services and burdens, led to the gradual shifting toward a type of tenure not unlike what we would consider rent payment today.

With the abundance of LAND during the settlement of Colonial America, charges upon the LAND were soon reduced to monetary fees that we call "taxes".

The fundamental LAND USE question is: Where does the final or ultimate right in the LAND lie?

The answer requires an understanding of how the law affects our USE and disposition of LAND. The basic premises are simple but they are not appreciated by a very large percentage of the general public.

The root of the problem of understanding is in the mistaken notion that property in commodities and property in LAND is the same. For example, the author of your Technical Report #9 does a good job of presenting the "bundle of rights" concept which helps in the appreciation of real property law, and yet he erroneously blends references to personal property and real property.

In fact, now and in history, the State in the form of the King, Feudal Lord, Federal or Provincial Government "lets" the rights to LAND and grants several of the "sticks" of the total "bundle" but retains the key "sticks" of police power, escheat and eminent domain as well as the power of "taxation".

In fact, now and in history, this granting or letting of "titles" is and always has been a contract. That is a set of provisions are laid down that the grantee must fulfill in an ongoing basis - or else!

Otherwise, the grantor (Government or State) will exercise its overriding and more powerful rights and withdraw all of the sticks (rights) that it had previously granted.

That the relationship in all cases between "owners" of rights in LAND and the government is parallel to the leasee-lessor relationship is not disputable. It is, however, a very difficult truth for some people to grasp.

This is because in the early stages of settlement of an area, when LAND appears to be free, the tradition becomes engrained that holders of titles to rights in LAND have complete and exclusive control over "their" LAND.

However, the basic idea of duties and obligations that were due the King as grantor of titles is still with us. The "dues" have been replaced by a more easily paid monetary fee, but the balance between the right (or benefits or privilege) and the obligation is now as much a part of the principle by which rights in LAND are granted as in feudal times.

In Alberta, the Department of Lands and Forests is the grantor of titles and the municipalities are to administer the collection of the fees. Unfortunately these intended policies are thwarted by regulations and statutes of the Department of Municipal Affairs, under whose jurisdiction the municipalities operate.

The traditional intention of the resident municipality in administering the collection of landholder's obligation fee has been that it be proportional to the market price.

Unfortunately, Alberta's present statutes and regulations in fact explicitly prohibits the municipalities from maintaining the balance between owner obligations and owner benefits. Therefore, although these benefits have increased with population growth and improved technology, municipal receipts have not been permitted to rise correspondingly. e.g. - rural assessments have been frozen for at least 20 years. Urban municipalities are forced to assess undeveloped LAND at ridiculously low rates, and to include improvement values in their assessment base. Consequently, they have not been allowed to collect fully on LAND owner obligations either.

Effective rates of present "taxes" on the LAND vary from less than 1% for parcels classified as agriculture to about 2% for locations in our larger urban centres. Under current economic conditions, these rates should approach 9% to reach the intended balance.

To argue that farmland has a value in use far less than its value in exchange and to justify low assessments this way, is to miss the point.

Our municipal fund raising "base" is directly related to market value or price, and to differentiate at the assessment stage between some portions of the space of our Province and others according to their USE is to be unjust to some of our citizens since they are being forced to subsidize the others.

The increment between what is now obtained by the municipalities and what would otherwise be collected, were it not for the contradictory restrictions imposed by the Municipal Affairs Department; being a "benefit" that accrues to the owner, is automatically capitalized to result in market prices that are arbitrarily and artificially higher than they would be if the increment were brought into the public purse.

If the municipalities were allowed to carry through with the responsibility they have, on behalf of all their citizens, to insure that the titleholders of the LAND of the municipality maintain the intended balance between the obligations of ownership and benefits that the owner obtains from the community around him, the higher costs of holding LAND would stabilize or decrease LAND prices. Efficient use of LAND would be encouraged. LAND hoarding by individuals and groups of all nationalities would be discouraged and the large areas of rural and urban Alberta that are now USED only for speculation would become available for productive, residential or recreational USE - at reasonable prices.

All of the problems that will have been addressed to you about the USE of the presently alienated LANDS of Alberta could be minimized or avoided - if the price of that LAND were reduced.

An ongoing circumstance, where our LAND prices were considerably reduced is difficult to imagine, but this is the solution we must seek. To test that statement, reflect how stabilized and low LAND prices would influence each of the "problems" listed in our introduction.

We hope you will critically examine our analysis of why our current practices have taken us so far from the desired goal.

There are many beneficial effects that any community would enjoy if its LAND tenure system demanded full payment of Owner-USER obligation fees. A prime creative motivating force would be the "Tax Incentive" of the accompanying relief from taxation of labor and capital. We invite you to examine the addendum to this Submission, wherein we have itemized a number of these effects.

We have also outlined further justification for the collection of the LAND holder-USER obligation fees by the community.

Finally, this addended discussion takes issue with the common practice of referring to the collection of funds from LAND values as a tax. The fallacies and incorrect policies that this practice leads to are illustrated.

Our discussion has been bordering on a public vs. private LAND ownership philosophy debate.

As a society we have already decided we desire the private titleholder approach. The undesirable effects of current practices are most often judged to be the result of a faulty philosophy and the increasingly restrictive regulations that have been put into effect in Alberta and elsewhere have been thought necessary to adjust or correct the faulty philosophy.

Our analysis has been an attempt to demonstrate that it is the mal-administration of our traditional philosophical intentions that has resulted in the undesirable effects. We hope you will share our conclusions that it is the misapplication of our intended policies that have resulted in anti-social behavior of some holders of rights in Alberta LANDS and our private-public LAND USE conflicts.

We would like to summarize our argument for a modification to our traditional approach in point form:

We contend that owners of rights in LAND are motivated to under USE or withhold it from any USE because:

- 1) It is often to their financial advantage to do so.
- 2) This follows because there is frequently more gain in speculation than in production.
- 3) This follows because the ownership obligation fees being unearned and being part of the future benefits or income accrue to the owners in question, and so become capitalized into higher and higher market prices.
- 4) This follows because the owners now retain much of the ownership obligation fees that belong to the community or municipality.
- 5) This follows because Provincial regulations demand it.

The reason that the Provincial law and/or regulations demand this action by the municipalities raises an interesting question about the intelligence and integrity of those in responsible positions, but it comes down to a general unawareness on the part of the general public.

We are not certain as to the degree by which our organization represents the general public of Alberta, but we believe that each informed and concerned citizen would expect this distinguished group to

recognize the importance of these considerations and to assimilate these conclusions with all of the other data that you have and will become exposed to in the course of your many Hearings.

We therefore urge you to impress on the provincial authorities that their real property assessment policies will have to be redirected if present and future LAND USE conflicts are to be resolved. They must be convinced that the "better way" of LAND USE control will be realized only if the owner obligation fees are publicly collected because this action will;

- 1) solve the financial problem of "betterment" due to community action
- 2) motivate owners of rights in LAND to USE the LAND efficiently
- 3) reduce or minimize the cost of LAND acquisition for public programs
- 4) permit effective "planning" without excessively restrictive regulations.

Because our time is short it is possible that immediate mandatory action by the provincial authorities should be taken. For example, it is not unreasonable to consider that the owner obligation fees for all provincial LANDS be assessed and collected by a central body. In this way, our renewable LAND resource would be a perpetual source of public funds. The parallel to our present method of deriving public revenue from our non-renewable mineral resources is obvious.

However, we favor a free choice approach that would give each of our municipalities the option of continuing with current practices, or modifying the base source of public revenue and the rates at which funds are drawn from that base. In this way, individual jurisdictions could evaluate the approach most beneficial to their circumstances, and at the same time, local autonomy would be retained and strengthened.

To this end we would recommend:

- A. Lift the agricultural land assessment ceiling and place the same assessment value - market value ratio requirements on it as for all other lands in Alberta.
(This would not require legislation as the freeze order is a regulation, not a statute.)
- B. Amend the Municipal Taxation Act so as to permit our municipalities to untax improvements.
(A suggested amendment to result in this "enabling" legislation is detailed as Appendix A.)

Submitted by
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PROPOSED AMENDMENT
TO
MUNICIPAL TAXATION ACT

It is proposed that Clause 12, Section 36 of the Municipal Taxation Act (Chapter 54) of the Statutes of Alberta 1967 which states:

Notwithstanding the provisions of this or any other Act,

- (a) the council of a municipality or the board of a collecting school district by by-law, or
- (b) the Minister, in the case of an improvement district, by order

may exempt from taxation all or such percentage of the assessment of improvements described in subclause (iii) of clause 12 of section 2, as is considered advisable.

be amended by striking out the words "subclause (iii) of" so that it will state:

Notwithstanding the provisions of this or any other Act,

- (a) the council of a municipality or the board of a collecting school district by by-law, or
- (b) the Minister, in the case of an improvement district, by order

may exempt from taxation all or such percentage of the assessment of improvements described in clause 12 of section 2, as is considered advisable.

NOTE: The complete Clause 12 of Section 2 is reproduced below for easy reference.

12. "Improvement" means
- (i) a building or structure erected or placed upon, in, over or under land, whether or not it is so affixed as to become transferred without special mention by a transfer of the land,
 - (ii) any thing affixed to or integrated in a building or structure affixed to the land that would without special mention be transferred by a transfer of the land, and
 - (iii) machinery, equipment, appliances, working tanks and other things including the supporting foundations and footings, but excluding buildings and excluding tanks used exclusively for storage purposes, that form an integral part of an operational unit designed for or used in
 - (A) processing or manufacturing, or
 - (B) the production of natural resources or the transmission of natural resources by pipe line,
 whether or not the machinery, equipment, appliances, working tanks or other things are so affixed as to become transferred without special mention by a transfer of the land;

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ADDENDUM

ADVANTAGES TO THE COMMUNITY

- A. If a community initiated a programme to establish the intended balance between the benefits of owning rights in LAND and the obligations for these privileges, the increased cost of holding the LAND would tend to motivate owners to USE it as efficiently as possible. Substantial areas that are now vacant or in "summer fallow" would be returned to USE. Thus:
- 1) making LAND currently under USED available for productive, residential or recreational purposes,
 - 2) reducing urban sprawl and corresponding servicing costs,
 - 3) eliminating urban blight through private renewal.
- B. When the future benefits that holders of rights in LAND can expect to retain are reduced by the amount of the obligation fees, the market price is capitalized at a correspondingly lower level, and it would follow that:
- 1) LAND speculation by residents, non-residents, Albertans, Canadians and/or foreigners would be discouraged,
 - 2) raw LAND costs for housing and agriculture would be reduced,
 - 3) publicly popular LAND USE programmes such as parks, roadways and recreational areas could be planned and provided for at reasonable cost,
 - 4) the problems of "planning" would be correspondingly reduced.
- C. Where increased public revenues are derived from LAND values, a corresponding reduction in the confiscatory taxes on capital and labor would be possible. Among the constructive effects that would follow such actions are:
- 1) Capital and Labor would want to locate there because individuals and groups (communal or corporate) would be assured of retaining a just return for their labor or investment,
 - 2) consumer costs for goods, and rental (commercial and residential) accommodation would be cut by the amount of the tax reduction.

JUSTIFICATION

Beyond the fact argued in the main body of this Submission to the effect that in tradition and in law, holders of rights in LAND have a reciprocal obligation, several other positions are possible to support the collection of public funds from unimproved LAND values.

The overriding consideration is that this procedure takes the burden off value created by individual effort and places it on value created by society. The community receives for community purposes, payments directly proportional to value of services rendered and benefits conferred by the community.

In addition to such important considerations as the impossibility of evading the fee payment because the LAND cannot move away, and the fact that the fee is cheap and easy to collect, it is possible to apply both "benefits received" and "ability to pay" arguments to justify this action.

There is an increasing public awareness that gains in LAND prices are "windfall" in nature and that they come from the industry and demands of the other people of the community. A demand is growing that this increment accrue directly to the people of the community - not private title holders.

Also it is being recognized that a substantial portion of the capital gains tax now being collected by the "Feds", is the owner obligation fee that could and should be going directly to our municipalities.

Because the justification for public collection of owner obligation fees is so much more apparent when the unique nature of LAND is understood, we have reproduced for your perusal, a two page excerpt from an excellent article which appeared in the August 1960 issue of House and Home magazine. This follows as Addendum pages 3 and 4.

Many great lawgivers and economists have said landed property is different



MOSES (1400 BC): The land shall not be sold forever; for the land is Mine; for ye are strangers and sojourners with Me. *Leviticus XXV.*



JOHN STUART MILL (1806-1873): Landlords grow richer in their sleep without working, risking, or economizing. The increase in the value of land, arising as it does from the efforts of an entire community, should belong to the community and not to the individual who might hold title.



BARUCH SPINOZA (1632-1677): The whole soil should be public property.



ABRAHAM LINCOLN (1809-1865): The land, the earth God gave to man for his home, sustenance, and support, should never be the possession of any man, corporation, society, or unfriendly government, any more than the air or water, if as much. An individual, or company, or enterprise requiring land should hold no more than is required for their home and sustenance, and never more than they have in actual use in the prudent management of their legitimate business, and this much should not be permitted when it creates an exclusive monopoly. All that is not so used should be held for the free use of every family to make homesteads, and to hold them as long as they are so occupied.



JOHN LOCKE (1632-1704): God gave the world in common to all mankind. Whenever, in any country, the proprietor ceases to be the improver, political economy has nothing to say in defense of landed property. When the "sacredness" of property is talked of, it should be remembered that any such sacredness does not belong in the same degree to landed property.



WILLIAM BLACKSTONE (1723-1780): The earth, therefore, and all things therein, are the general property of all mankind, from the immediate gift of the Creator.

HERBERT SPENCER (1820-1903): Equity does not permit property in land. . . . The world is God's bequest to mankind. All men are joint heirs to it.



ADAM SMITH (1723-1790): Ground rents are a species of revenue which the owner, in many cases, enjoys without any care or attention of his own. Ground rents are, therefore, perhaps a species of revenue which can best bear to have a peculiar tax imposed upon them.



LEO TOLSTOI (1828-1910): Solving the land question means the solving of all social questions . . . Possession of land by people who do not use it is immoral—just like the possession of slaves.



TOM PAINE (1737-1809). Men did not make the earth. . . . It is the value of the improvement only, and not the earth itself, that is individual property. . . . Every proprietor owes to the community a ground rent for the land which he holds.



HENRY GEORGE (1839-1897): Our primary social adjustment is a denial of justice. In allowing one man to own the land on which and from which other men must live, we have made them his bondsmen in a degree which increases as material progress goes on. It is this that turns the blessings of material progress into a curse.



THOMAS JEFFERSON (1743-1826): The earth is given as a common stock for men to labor and live on.



DR SUN YAT-SEN (1866-1925): The (land tax) as the only means of supporting the government is an infinitely just, reasonable, and equitably distributed tax, and on it we will found our new system. The centuries of heavy and irregular taxation for the benefit of the Manchus have shown China the injustice of any other system of taxation.

Unimproved land differs in three ways from any other kind of private property

1. Unimproved land is the only kind of private property that the owner did nothing to create. He just found it ready-made (or bought it from someone who found it ready-made).
2. Unimproved land is the only kind of private property whose value grows, not because of anything the owner does, but because of what thousands of other people do. Said the great Victorian economist John Stuart Mill: "Landlords grow rich in their sleep." Suburban land would command only a small fraction of today's price if the city had grown up somewhere else.
3. Unimproved land is the only kind of private property anyone can own for years without doing anything or assuming any responsibility to maintain and protect his investment (other than paying a tax which is usually small and is always deductible).

If you invest your money in a building, your investment will crumble and decay within 20 years without constant upkeep.

If you invest your money in machinery, it will be obsolete within 20 years.

If you invest your money in stocks they will soon be worthless unless the company is well managed year in and year out.

If you write a bestseller book, your copyright and its renewals cannot run longer than 56 years. If you perfect a great invention, your patent (which is not renewable) can run only 17 years. After that you have no more legal claim to your own brainchild than anyone else.

But unimproved land, which was there for a million years before the Pilgrims landed, will still be there a million years after you are dead, regardless of what you do or do not do about it.

The moral foundation for private property rests on our belief that in a free society every man owns himself and therefore is entitled to own whatever he himself creates. This foundation is very shaky indeed under the private ownership of unimproved land (unless, of course, the owner performs at least some of the essential functions of the land developer, who is surely worthy of his hire). That is why moralists and law givers from Moses to Jefferson and Lincoln have questioned any man's right to hold more land than he can use.

By definition, unimproved land is land whose owner has done nothing to earn a profit. So it is a strange paradox that our laws not only give private ownership of land all the protection they give the private ownership of other property; they go further than that to give the ownership of unimproved land the most favorable possible tax treatment and greater permanence-without-effort-than any other form of private property.

OWNER OBLIGATION FEE NOT A "TAX"

Throughout our Submission we have been careful to keep the true nature of the LAND owner obligation fee foremost in your minds.

Other attempts to succinctly identify this publicly generated public fund have been made. To the economist, it is simply Economic Rent, and by definition it belongs to the people who have generated it. Often the descriptive term "unearned increment" is used. We believe a suitable phrase for most lay discussions would be "ground rent". This concept is particularly suitable when it is recalled that the relationship between a title holder to rights in LAND and society is the same as the lessee-lessor relationship in a long term lease - with the community (lessor) having the power to periodically redetermine the "ground rent".

Through recent history however, public collection of funds from LAND value sources have been referred to a "taxes".

A tax is "a pecuniary charge imposed by authority upon persons or property for public purposes", and it is obvious why everyone wants to avoid or minimize it.

It is true that a portion of what we have been calling obligation fees of the owners of rights in LAND, is now obtained by our municipalities as one of the two components of what is called the Property Tax.

This two part "tax" as it is administered in Alberta, is in fact a combination of the fee (which is supposed to be proportional to the market price of the LAND) and a tax on the improvements or buildings on the parcel in question. In rural Alberta, some of these improvements are exempt from taxation, but in urban centres where more than half of our people live, the taxing of all improvements is made mandatory by Provincial Statutes.

This second component of the "Property Tax" is truly a tax because it is a confiscation of some of the owner's production. The impact is predictably a deterrent to initiative and enterprise, and its heavy imposition can destroy all incentive to make improvements to or upon the LAND. As noted above under "Advantages to the Community", an opposite reaction is assured when the impost upon LAND values is increased.

It is indeed unfortunate that we tend to refer to this portion as a "LAND tax" or a "site value tax". Thus through habit, laziness and ignorance, we propagate this phraseology or misconception so that the original and continuing nature of the owner obligation fee is not apparent. Consequently when this fully justifiable fee is minimized, most of our citizens tend to approve and we often mistakenly condone assessment limitations and freezes, fractional assessments and split mill rates. We end up so confused that we accept authoritative sounding statements that tell us "the Property Tax is regressive" and "inadequate". We then mistakenly approve of "property tax reduction plans" and other schemes that in reality compound our LAND related problems - because the owner obligation fees are being avoided.