

Exactions as Double Taxation

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Municipalities routinely take from owners some of their rights to use land, and, instead of paying compensation for the property taken, require the owners to pay ransom to recover their lost rights. These payments are euphemistically referred to as *exactions*; they entail charges in the form of money, land, or public facilities improvements required by local governments in return for development rights. Money charges of this nature, sometimes called impact fees, may be as high as tens of thousands of dollars per lot.

The popular view is that in the absence of exactions, developers of new projects would not be paying their fair share for the new public facilities (for example, waste water treatment and road or utility extensions) required specifically to serve their new developments. Many feel that without exactions, owners of previously developed properties would be subsidizing the owners of new developments.

This view may be incorrect, however, as it fails to recognize the double taxes that can actually be applied to undeveloped properties that are prime candidates for development. Imagine a community in which the jurisdictions of taxing authorities (such as a fire protection or mass transit districts) extend beyond the urbanized area into the agricultural fringe. The

market value of an agricultural parcel in the area close to urban developments reflects two components: the value in use of the tract as farm land, and the value of the owner's option to develop the agricultural land for urban activities.

If the undeveloped land is assessed for tax purposes based on its value in use, then the owner certainly is not paying for an urban level of public services. If, however, the undeveloped land is assessed based on its higher market value, the owner of the undeveloped land pays substantial sums for a trivial level of public services. Yet the higher property tax represents only the first time that the owner of undeveloped land must pay for these urban services.

The owner then pays for urban services a second time, when forced to acquire the right to develop the property by paying exactions. For example, in order to gain the jurisdiction's approval to subdivide a parcel into residential lots, the owner/developer might have to donate to the jurisdiction a tract that can be used as a public park or as the site for a new school. Essentially, the municipality has captured the rights to use and develop land, and will return these rights only if the owner pays an exaction. It should not surprise the reader that under "exaction,"

Webster's Ninth New Collegiate Dictionary lists the synonym "EXTORTION."

Of course, if owners of land on the urban fringe do not pay taxes on the option value prior to undertaking development, and if after development they receive services of greater value than their immediate tax payments could buy, then they indeed receive subsidies from owners of established properties. However, to the extent that owners of not-yet-developed tracts on the urban fringe do pay taxes in excess of the values of the public services received, it is they who are subsidizing the owners of previously developed land. In such instances, if owners of undeveloped land must then pay for rights to develop, they are clearly being required to pay twice.

It would be interesting to learn the relative magnitudes of the subsidies that exist. Perhaps, contrary to the popular view, the owners of undeveloped land pay *more* than their fair share; such an outcome would result if the subsidies these owners paid prior to developing exceeded the subsidies they received after development occurred. Of course, the *net* subsidy depends on the rules for assessing agricultural land and the jurisdictional boundaries. ■

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