2018

Where Does Public Land Come From? Municipalization and Privatization Debates

Oksana Mironova

Samuel Stein
CUNY Graduate Center

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by Oksana Mironova & Samuel Stein, le 06/03/2018
Tags: public land | tax-lien sales | privatization | community land trusts | municipalization | land | land use | New York

This article illuminates contemporary land-use and disposition struggles in New York City by tracing the history of land's passage between the private and public realms. The authors contend that government and community-controlled nonprofit organizations should govern the disposition of the city's remaining public land supply, deliberately deploying this scarce resource to promote the well-being of the people and neighborhoods most at risk in a speculation-fueled real-estate environment.

Sunnyside Yards, Queens, New York, 2015 Photo by Nathan Kensinger

For most of the 20th century, public land has played a pivotal role in the development of affordable housing, as well as the realization of broader urban-planning visions. In New York City, even though the supply of available public land has dwindled over the past 30 years, it remains at the center of multiple political conflicts: the disposition and redevelopment of Crown Heights' Bedford–Union Armory; the fate of Edgemere, an unfinished urban-renewal site in Far Rockaway; the East Harlem properties that the East Harlem–El Barrio Community Land Trust (CLT) seeks to convert into affordable housing; the various proposed sites for private "infill" development on public housing sites; and more.

These struggles are fueled by two factors. First, public land fights are strategic: development on public land offers neighborhood groups an opportunity to intervene through the city's land-use review process; it also lowers the cost of development, allowing for deeper affordability. Second, these sites are politically potent: in New York City today, there is nearly a political consensus that government should use its resources—including land—to ease the affordability crisis.1 Both factors provide grassroots groups with greater potential for influence, as compared to development that occurs on privately owned land.

This political climate begs the question: where does public land come from? In this essay, we explore how land has passed between the private and public realms in order to illuminate contemporary land-use struggles in New York City.

How has land become public?

Private and public land ownership are both socially constructed. Historically, land held in common—this is, shared collectively by a group of people—was privatized through enclosure, a legal and often violent means of asserting individual property rights. In the US, this process began with the mass displacement and genocide of native peoples. It continued with the establishment of large plantations—in many ways this country's dominant special form (McKittrick 2013)—and a myriad of smaller enclosures of common land by speculators, settlers, landlords and developers.

Enclosure, however, is not the end of history. In the US, both elite and popular movements have frequently facilitated the transition of land from private to public ownership.

Elite movements for public land ranged from the displacement of native landholders through the creation of national parks (Katz and Kirby 1991) to lobbying by landlords in low-rent markets for government buyouts. These elite efforts often amounted to *municipalization by dispossession* (Harvey 2003). While they led to transfers of land from the private sphere to the state, they did not necessarily result in increased control over the land by the public.

At the same time, popular movements for public land included utopian communities that sought non-oppressive alternatives to both rural and urban life (Hayden 1976), as well as "sewer-socialist" municipal governments that came to power in several US cities during the late 19th and early 20th centuries and pursued land and infrastructure municipalization policies (Judd 1989). These movements amounted to *municipalization by repossession*, resulting in both public (or collective) ownership and more democratic land management.

The land cities hold today transferred into public ownership as a result of these elite and popular movements, as well as parallel cycles of investment and disinvestment (Kondratieff 1979). In New York and many other US cities, the creation of public land falls into the following four broad and often overlapping historical categories.

Period 1 (1890s–1920s): City Beautiful and excess condemnation

City Beautiful was an urban-planning movement that stressed vast public projects—grand boulevards, expansive parks, municipal palaces—aimed at boosting property values first and providing public services second (Foglesong 1986). Producing these tremendous spaces meant accumulating large tracts of land, either through eminent domain or backroom buyouts between political patrons and clients (Schwartz 1993). City governments commonly practiced “excess condemnation:” taking more than they needed, selling a piece of the “improved” land for a profit, and in turn generating revenue for the new project (Cushman 1917). This mode of municipalization was eventually curtailed by the Great Depression, but it established a model for future public takings.

Period 2 (1930s–1970s): redlining and urban renewal

The Great Depression sparked a massive housing crisis, spurring intensive federal intervention into the urban housing market, including public-housing and homeownership programs. Both programs allowed and encouraged localities to segregate by race (Rothstein 2017). With federal funding, cities municipalized large tracts of land, facilitating the development of government- and union-owned “modern housing” (Radford 1996). Meanwhile, homeownership schemes set the parameters for redlining, which in turn created the conditions for large-scale slum declaration, eminent-domain takings, and “urban renewal” redevelopment (Wilder 2000). At the end of this period of metropolitan reorganization, a wave of urban disinvestment, including mass arson and landlord abandonment, swept across the US, and city governments ended up with large stocks of cleared but non-redeveloped parcels. Around the same time, a corollary process unfolded in industrial spaces.

Period 3 (1940s–1970s): deindustrialization and military restructuring

The post–World War II US economy was premised on unrelenting military–industrial growth, including a shift of military production and coordination out of urban facilities like Brooklyn’s Navy Yard and Army Terminal and Manhattan’s armories (Markusen 1991). These large abandoned spaces often transferred from federal to city ownership. Concurrently, large-scale manufacturing began decamping from many northern US cities, citing rising land values, anti-industrial land-use policies, depreciating factories, and labor militancy (Bluestone and Harrison 1982). While some industrial sites were converted to FIRE-based uses (Fitch 1993), others went into foreclosure and were picked up by municipal governments. Deindustrialization threw many urban economies into downward spirals, setting the stage for a final round of public land accumulation.

Period 4 (1970s–1990s): devaluation and foreclosure

As a result of many factors—including the disruptions of redlining, deindustrialization, deregulation of mortgage-lending institutions, and urban renewal (Fullilove 2005)—cities experienced a sharp rise in both overleveraging of multifamily properties and landlord abandonment in the 1970s and 1980s (CSS and NWBCCC 1996). With a decline in federal funding for municipal projects under Reagan, urban governments—already engaged in revanchist reaction to popular movements for racial and economic equity (Woods 2007)—embraced austerity politics, leading to even more foreclosures. This decimated the housing stock in many urban neighborhoods; for example, in 1980, Harlem contained just 2% of New York City’s housing stock, but more than 20% of its landlord-abandoned homes (Goldstein 2017). In

1981, the city's *in rem.* (tax-foreclosed) housing stock grew to nearly 112,000 units (Stegman 1982).

Over the course of these four historical periods, cities amassed a great deal of land and property. Some cities, like Newark in New Jersey, continue to maintain a large stock of public land. In New York City, public land plays a key role in city-driven neighborhood redevelopment.

Does land become public in New York City today?

New York City has entered into a fifth historical category: severe land commodification (Madden and Marcuse 2016). Even as land prices were bottoming out across New York City in the 1970s, investors were beginning to speculate on vacant land and rental buildings. Over time, as the real-estate market expanded relentlessly, this process morphed from a peculiar phenomenon to a generalized condition (Lees *et al.* 2013). These practices intensified in the long lead-up to the mortgage crisis, fueled by easily accessible and often predatory credit (Fields 2015). Today, New York City rarely condemns large swaths of land for urban renewal, and landlords no longer walk away from properties written off as worthless. Instead, the overleveraging of modest rental buildings has become commonplace and tenant harassment remains a standard business practice across the city (Teresa 2016).

Financially distressed buildings often face the risk of tax foreclosure, whether they were overleveraged by predatory investors or their property tax obligations became unaffordable to individual homeowners. Between 2010 and 2015, approximately 15,000 New York City properties and vacant lots had at least one tax lien sold (Stern and Yager 2016). These included 43,600 residential units as well as a substantial number of commercial spaces.

In the past, tax foreclosure resulted in temporary municipalization of private property. The availability of municipally controlled vacant lots and buildings played a significant role in Mayor Koch's (1978–1989) 10-year affordable housing plan to build or rehabilitate 200,000 units (Soffer 2010). Mayor Giuliani (1994–2001) changed this policy: rather than taking direct possession, the city began to place liens against delinquent properties. The liens are now sold at below-market value to a trust managed by the Bank of New York Mellon, which bundles the liens into bonds and sells them to accredited investors, who then have the option to collect the debt or seize the property through foreclosure. This policy change was part of a broader effort by the city to shed housing operation and management responsibility. With lien sales, "the city would get its money up front, and privatize the question of what happened to the buildings—and their tenants." (Krinsky 2015).

Public land in the neoliberal city

Advocates have long called for an overhaul of the lien sale process, to address both the city's housing affordability crisis and the loss of small businesses and community institutions. Efforts have focused on diverting a larger number of distressed multifamily properties into a preservation trust or removing nonprofits and single-family homes from the lien sale. While such bills have been introduced in the city council, the de Blasio administration has resisted these reform efforts—much less a full overhaul—because tax lien sales are: (1) profitable for powerful bond holders; (2) successful in retrieving a portion of tax revenue up front; and (3) ideologically consistent with the public–private city resource management model.

With a dwindling supply of vacant public land, the city has increasingly begun to target land previously thought to be off-limits to private development, from public libraries to infill on New York City Housing Authority (NYCHA)-owned parcels. While this approach is commonly justified as filling urgent short-term needs—like raising funds to address NYCHA's $25 billion capital backlog—it also relinquishes public leverage over land that is difficult to retrieve. The city has, in the past, relied on mission-driven developers to ensure that development of public land prioritizes community needs. The presence of a mission-driven organization, however, is not enough for long-term stewardship. In one of the more egregious examples, in 1994, the city gave the Abyssinian Baptist Church–affiliated Abyssinian Development Corporation a public lot on 125th Street in Harlem to meet a community-expressed need for a new supermarket in the neighborhood. Twenty years later, however, Abyssinian sold the land to Extell Development Company for a luxury residential development (Busà 2017).

When planners and politicians view private development as the only means of addressing community needs, public land becomes just another deal-making tool. If the history of municipalization in the US is rife with inequities, the act of privatization only redoubles the offenses. The complex and contradictory history of municipalization therefore warrants a more intentional approach—one which prioritizes democratic decision-making in long-term land management. New York City's remaining public land supply must remain outside of the market, through either perpetual government ownership or a carefully constructed form of community control.

Note: the authors' names appear in alphabetical order.

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