

So You Think You Own Your Land?

Your Title – Is it Safe?

In an open and democratic society it is the heart-held belief that when a citizen purchases property – including land – that such property is legally and securely held by way of title. That is, the landowner has inalienable rights to such land that can be proven by way of name and title deed – a title that rests securely in the vaults of the Department of Land Administration (DOLA). No citizen can steal or thief such privately held titles as DOLA maintains strict security standards, settlement agent's act professionally according to well-laid out laws and lawyers stand ready to defend property rights in courts of law. In short there are clear, defined and enforceable property rights that protect legal titleholders against theft – *by private citizens*. For many years the typical landowner slept well at night knowing that no thief could appropriate her land in any arbitrary manner unless it was purchased at market value, above the table and in the full sight of DOLA – the appointed referee.

Alas, such a system of checks and controls could not prevent *government thieves* from appropriating private land at no cost, without the right of appeal and without directly taking control of the title. Stealth was the order of the day while these government pirates used caveats, easements, restrictions and Section 70AA notices on titles that effectively rendered private land use null and void. Whiteants crawled all over titles that appeared 'private' but effectively became 'public'.

Other, less obvious, methods are used in terms of local council planning and zoning. Vast tracts of land have been labelled 'conservation' or conservation potential, 'bush forever' while the same land is also zoned 'rural' and yet allows limited or no use. Moreover, such land has little or no urban zoning potential as restrictions abound concerning water tables, drainage, sacred plants, sacred sites, closeby rivers, buffer zones and tree habitat areas – to name a few. Hence, local councils have acquired much discretionary power rendering large sections of metropolitan land useless and non-useable. Land titles mean nothing when governments can arbitrarily and forcefully use zoning laws and 'policy' to disenfranchise landowners. Clamps on titles are one method of land seizure while low grade zoning is another such as land 'legally' zoned rural that can not be used for rural

purposes. State and federal governments also dictate zonings and prohibit land use by various pieces of legislation.

Through these methods, various layers of government (and their back-door agencies) appropriated vast amounts of private land (and buildings) by employing dubious methods of land seizure without compensating landowners for the loss of land use – and realistically their ownership of title. Land titles mean nothing in this state when a plethora of government bodies each compete to drive their nails in the landowner's coffin.

Appropriation by Regulation

At least Third World dictators have the 'integrity' to *nationalise* assets and land by direct means – using guns and force – and openly at that. The asset owner knows with certainty that the asset is lost and yet maintains the hope that one day it will be retrieved by force or by justice. Perth's bureaucratic dictators possess less integrity as they appropriate land by multi-layered *regulation* – virtually at their sole discretion and interpretation - lacking respect for individual property rights and containing only weak rights of reply. Restrictions and clamps on land use eventually lead to no use. Even land zoned 'rural' (along with the attached rights of farming/grazing) has been rendered useless by onerous environmental clamps and buffer zones. Grazing cattle, sheep and pigs under existing zoning law of 'rural' can be illegal under other areas of law. In other words, such land is zoned 'rural' but is not rural – as landowners are threatened by various government 'authorities' that will 'report' them for pursuing rural interests. Landowners are confused by many government bodies competing for the *de-facto* ownership of land for which they have not offered any compensation. To add to the confusion there are competing federal, state and local laws that conflict with each other only to complicate legal interpretation. There appears no difference between the *nationalization* of land in third world countries and the *regulation* of land use in the State of WA.

Government Theft, Secrecy and Shifting the Goalposts

So who are these self-righteous government thieves? Those people that are 'doing good' and 'what is right' by using evil and unethical means

to steal private land? There are numerous government agencies that clamour all over each other and indeed fight for land domination - your turf - in the quest to build their empires, justify their existence and gain more power and control over land for which they paid not one red cent. This land acquisition stampede has meant a trampling of landowner rights whereby public institutions with socialist agendas have stopped at nothing and appropriated private land without conscience. Their rationale for land theft is that the broader community stands to gain even though private civil liberty has been violated and common law justice 'suspended'.

So how many government agencies fight over land use? There are, for example, the West Australian Planning Commission, CALM, Waters and Rivers Commission, Swan River Trust, local councils, special development authorities, Water Authority, Western Power and State Housing Commission to name a few. Each government body has a mandate and legislation that 'legitimizes' its intrusion into land use even though lines of demarcation are clouded.

A favourite method of subverting land use and preventing development is to shift the goalposts. That is, emphasize phoney and fake constraints in the hope that the landowner won't object or understand the severity of the zoning, easement or caveat until it is too late. Sometimes it is all too easy to exploit honest people. Other ways of shifting the goalposts include rejecting independent environmental reports as 'we know best' say the government thieves. So why not go away and get another report that confirms our view! So much for professional independence in a democratic society! Or engineer's reports that reveal water drainage is not a problem and again government agencies claim 'heresy' and so 'go away' until such time as you get it right! Or after the 'solutions' to environmental and water issues are resolved the real constraints raise their head after three years of trekking through the wilderness. No what we really meant (since we lost the first two battles) - say the Mandarins - is soil capability, the provision of wind corridors into Perth, the angle of the sun, nearness to 6,000 thousand year old sand dunes, the shadow of the Waggle or the need for 'green belts' at random and at our discretion - to name a few excuses and not reasons.

Constraints Become Objectives

What becomes obvious to any landowner that demands land use and/or wishes to realize the potential of her land is the enormous complexity

of the government decision making process. It is not open and transparent and it is not meant to be as the politically tainted Mandarins scheme for limitless power and prestige. The constraints on land use are transformed into objectives by many government bodies as development aspirations are considered 'premature', not in accordance with their socialist, cross-subsidization agendas and just plain not 'socially correct'. Such government Rasputins place emphasis on what cannot be done and display little interest in what can be achieved. Their negative and obstructive desires are revealed by all the hoop-jumping that the clients (landowners) are forced to endure. Eventually customer fatigue sets in and the landowner succumbs to the not-so-subtle blackmail of 'how much of my land do I have to give you'. Endless processes and hurdle-jumping cause 'land donations' to governments to appear almost 'legitimate'. No duress involved of course.

Unfortunately, another more serious reason for emphasizing 'constraints' is that of delay – the buying of time so that rear-guard actions can be mounted and even more constraints imposed later on. Land releases become more difficult year by year and so more joyful for the anti-developmentalists that delight in nostalgia and yesteryear. Perhaps the more serious objective by such people is to throw up as many constraints and barriers as possible in order prevent progress – full stop. Their colour is 'green' alright - not for the environment - but for the envy and jealousy that flows through their veins. They claim power and destiny over land which they do not own – a false and illegitimate power at that.

Hide and Seek in the Bureaucratic Jungle

The life-blood of the public sector is *regulation* – hold up, procrastination and delay – and so keep the private sector 'honest.' After all, short cuts may be taken and standards not met. However, while it is one matter to uphold standards it is another to obstruct progress and to employ deliberate time wasting tactics in order to burden the developer/landowner with more constraints and so costs. The excuses are many – your file has been misplaced (a favourite); the head planner is on leave; staff are in 'meetings'; we are waiting on seven other government department deliberations; their head planners are on leave; you have missed this month's agenda cut-off date; non-response to many professional letters (all ignored); we only chat over phone (no email, fax or letter responses); 'we' are exempt from laws but you are not; we are waiting on state legislation for 'clarification'; other matters have arisen; this is not our jurisdiction; this is

everyone's jurisdiction; there are seven pieces of legislation that relate to your application; we listen to 'important' lobby groups not you - and the list of excuses goes on.

A landowner could be forgiven for believing that the ultimate objective of these collective government bodies is to obstruct and prevent development - and delay is the major channel through which lobby groups can be mobilized and the appropriate legislation 'selected' to thwart progress. Time is also used to invent new legislation that can kill a previously acceptable proposal. At the very least, if Government dictators cannot obstruct more sophisticated land use then they will burden the landowner with as many constraints and caveats as possible - in order to 'sell' the political legitimacy of their 'mission' and the benefit of more 'private conservation' to 'their' constituents. If the 'social good' is that great, and at the expense of private landowners, then it is mandatory that the 'social cost' be paid to such landowners.

Who are the Servants?

The lowest forms of life in this jungle of land appropriation are landowners that pay shire rates, land taxes, income taxes, GST, stamp duty and capital gains taxes. Despite making a major financial contribution to the comfort, life and security of public 'servants' such landowners are treated with scant regard by the higher echelons of the WA public sector. Communication channels are clogged and 'consultation processes' only granted ceremonial duties. On many occasions landowners are informed *after* decisions are made and policies formulated. So called 'drafts' are circulated throughout the community that eventually receive 'widespread public support' that only justify the ideological stance of the government agency that wrote the policy document. This is top-down democracy whereby the power-drunk Mandarins force their own will on minorities. When landowners question the authority (or the wisdom) of such Mandarins they are told not to be so audacious and selfish. Besides, you may own your land but you do not control it - this destiny rests with us - the non-elected bureaucracy that will force you to accept and conform to its behind-closed-door edicts. Perhaps it is the selfishness of these Mandarins that should be in question and not landowners in this campaign of public theft? Besides, by what righteousness do these power-drunk people force their own will on others that pay their wages and secure their livelihood? Landowners and ratepayers are only nuisances to these Mandarins that have divorced

themselves from reality and accountability. Consultation is just an unfortunate ceremonial duty that is performed with a shallow facade and a falsehood that is intended to uphold an air of 'respectability'.

What happened to civil liberty and the right of the individual? Somehow the individual landowner has been isolated and tortured by government authorities. There is no justice – even under common law – as no one will hear the cries of a single person. From experience, I will tell you that governments prefer dealing with one landowner over many – as one can be blackmailed and deprived whereas the many will combine with one voice and so cast their political votes in anger. The government motto is 'divide, isolate and conquer' and so 'keep quiet' any political or policy repercussions. There is also the issue of 'legal precedence' as city councils do not wish a 'decision' concerning one landowner to have equity-spreading effects to other landowners.

Is it not ironic that the landowning class pays heavily via a plethora of taxes only to be treated with contempt by bureaucratic Mandarins that force their socialist agendas on the masses and so reveal their hatred of the people that feed them?

The Economic Cost – to the Consumer

The landowner is not the only big loser in this game of land appropriation. The ill-fated bystander is the consumer. A by-product of the fight between landowners and government thieves is the inflation in the cost of subdividing land driven by the explosion of processes, reports and multiple-layered government demands. There is a cost to this proliferation of a multi-layered process that is 'passed on' to the consumer. The more government bodies place restrictions on land use the more consumers will pay at the land auction. Much of Perth's land price explosion stems from the supply side of the fence and not just the demand side as *over-regulation* has pushed land supply costs higher.

It is not just the complexity of the development process that is costly to consumers but also the slowness and the vast restrictions placed on metropolitan land use by government 'planners'. As the supply of blocks coming onto the market is slowed by *over-regulation* so do consumers have to pay via rapidly escalating prices. Foot-dragging and procrastination is the life-blood of this bureaucratic behemoth driven by their own jealousy and

hatred of the private sector. Long delays in achieving planning approval, so typical of recent boom years, has only accentuated subdivision costs and final land prices.

It is this multi-layered, complex and secretive decision making process – that unless reformed – will continue to injure the innocent bystander – the consumer. In Perth’s case, the ample and continuous supply of subdividable land within 40kms of the city centre is not a ‘given’ and in fact has become increasingly more difficult to provide given the intransigence and bloody mindedness of Perth’s land-grabbing Mandarins. Defenceless consumers are forced to bow before these all-knowing visionaries of our destiny.

Land Taxes – Insult to Injury

Given that many landowners endure government ‘clamps’ on their land why are they forced to pay land taxes on land they cannot use now and possibly never will ? Even worse, the metropolitan improvement tax is levied on the same landowners – but for what? They will never enjoy the fruits of metropolitan improvement as their land has been denied any prospect of improvement whether infrastructure services approaches their land or not. Their hope has been totally cut off. There are firebreaks to be paid for and the church mice of the local councils have their bottomless pits to be filled with money that has not been derived from land that yields a return. Such rates have to be paid from other sources and NOT land return. It is this class of landowner that possesses ‘private’ land for tax purposes and yet ‘public’ land for social good purposes. As tax liabilities mount such people eventually succumb to government blackmail and sell their land for well below its value and economic potential.

Tradeoffs and Compensation

If the public demand is so great for public goods – such as more parkland, grassland river walkways, natural vegetation and clean water - then the public will be more than willing to pay for such great benefits received. Just as people are willing to pay for private goods based on value so will they apply the same principle to public goods. If there is no charge for such public goods then demand can be almost infinite as the users of such goods demand more *as there is no cost to themselves*. It is here that government agencies drive a wedge between those that ‘demand’ from those

that 'supply'. The landowners yield use, if not possession, to government agencies that threaten them and appropriate at no cost – and so the public at large is not charged or taxed. This is indeed socialist heaven as the government is seen as the bearer of gifts – albeit stolen goods - to the benefit of the ordinary citizen. However, the unethical behaviour of government and their blackmail will one day be seen, if not experienced by the many, and so the tide will turn against public theft.

So what are legitimate and fair landowner's rights? The answer should be the same as for any other type of property. Would any government tell a citizen that owns her car that it will be appropriated without compensation? Would governments knock on your door and take your lounge suite, TV or refrigerator? Would governments tell you – we will let you keep your car, lounge suite, TV and refrigerator – *providing you do not use them*. No, they would not. Ordinary people would revolt and say you have no right to any of my property, and besides, if did require some property of mine – you would pay me for it – according to mutual consent and valuation. Ordinary people would not be so gullible to allow government to appropriate such property behind closed doors by stealth and/or prohibit the use of private goods. *Stealing and denial of use are but the same*. People would tell governments through the ballot box what they thought of government arbitrarily taking away their property. And of course no government in this town would try to appropriate cars, TV's, lounge suites or refrigerators from their own citizens - through the front door in the cold light of day - as this would be seen as naked socialism and naked theft. The reason why landowners are targeted and denied natural justice is that they are a minority – and without a strong, cohesive political voice.

Aligning Social Costs with Social Benefits

In short, landowners should be compensated for land appropriation by government bodies – including the restriction of use. Firstly, according to the value of the opportunity lost (foregone land use) and secondly, according to the size of the public benefit bestowed on the community. The larger the social benefit the higher the compensation. The greater the re-zoning potential (as revealed by nearby examples) the greater the compensation. Professional land valuers can play an important role in this process of gaining a compensation figure by mutual consent. By linking social benefit to social cost the land grabbing mandarins will think twice about the

electoral repercussions of appropriating private land as it will now contain a cost that the broad community must pay for.

This is the challenge – to align social costs with social benefits. There needs to be a process whereby social benefits from land appropriation are clearly laid out and articulated so that the narrow community (ratepayers) and the broader community (taxpayers) can absorb the issues and decide whether they are willing to pay for such benefits. Obviously, in the minds of those that have to pay - the social benefits must exceed the social costs. It is private landowners that will receive payment and compensation commensurate with the magnitude of the social benefits. This calls for not only clearly defined *private* property rights but also clearly defined *public* property rights. This also implies that social benefits must also be clearly defined and not just a shade of grey with no price attached. At present in WA there is scant regard for public compensation to private landowners for grossly over-valued social benefits. Until there is a sensible realignment between social benefits and social costs the land thieves of the WA bureaucracy will continue to bestow stolen goods on the WA public.

So it Can't Happen to You?

The above discussion relates to people that own large tracts of land but what of people that own their home on a small piece of turf? Surely government thieves could not white-ant their ownership of title? Well, governments already have a major say in local urban land use. There are many by-laws and R codes that spell out restrictions on what can and cannot be done on urban land. What is commendable is that most of these laws and codes are transparent and somewhat uniform – in the quest to be fair to all. Hence, there is a high degree of certainty that the owner/developer is aware of. However, there is also a degree of arbitrary behaviour by local councils with regard to zoning and re-zoning that can cause large oscillations in value. The criteria and rationale for re-zonings are not always clear and landowners are again only 'minor players' in the game. Rights of appeal are limited if not tedious.

There are other ways that the small landowner can be adversely affected by government policy and decisions and that is by major roads, traffic lights, roundabouts, power lines, water pipelines, gas pipelines, phone towers, noisy shopping centres and land easements for utilities that impinge upon value. At least these small landowners have a voice in standing up to

City Hall as the 'many' can vote. The lop-sidedness of power in this small landowner-City Hall relationship is not as great as with broad acre landowners and government bodies.

Well, if governments cannot invade and appropriate your land (as a small holder) through back-door methods such as through reams of regulation then perhaps they could appropriate a slice of your land through the front door? How could they do that? The obvious way, and attempted by the present state government, would be to implement a tax on the family home. Although the arbitrary figure or value was to kick-in at \$1,000,000 this would only be the foot in the door. Just as with student fees (that began with low, nominal amounts) there was an escalation into a full-blown figure over time – 'a foot in the door approach' – that could work very well in the case of the family home. Why not lower the 'home tax' to \$500,000 after the election and maybe after two terms of office down to \$250,000? What citizens of Perth would tolerate a 'foot in the door' strategy that only opens up a Pandora's Box of greater taxation for the middle class?

And is it not the middle class that already pays a myriad of taxes and yet standbys and watches unfettered government greed appropriate their assets as well? It is not just the rich that are being attacked by the ideological Mandarins but ordinary folk that have built up a nest egg over time – since the war – so that they would not be dependent on government in their old age. The rights of the individual and freedom go hand in hand. Do not think that over-bearing aristocratic Mandarins cannot crush you.

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