

1-1-2003

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## Recommended Citation

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# Creating Elderly Friendly Cities Through Land Value Taxation

## INTRODUCTION

Contemporary American living can be summarized in one word; isolation. For the past three quarters of a century, American policy coupled with technological advances has created a landscape that has minimized interaction between the American citizenry while severely diminishing any sense of community. Current urban development more closely resembles a cluster of Aegean islands than tightly knit communities contributing to the synergies of city life. To acquire any of life basic necessities, urban dwellers must depart from their island homes and navigate an automobile through a sea of identical island homes and lifeless buildings. During his voyage, the dweller will observe that only automobile vessels are capable of withstanding the harsh and brutal outside world. Like his home, the destination is also an independent, self-contained area. The destined outlet consists of parking spaces surrounding a square building, offering no indication that it but one component of a greater urban environment. This bleak landscape pervades the American city and has created general condition of detachment which isolates the citizenry from any identifiable place.

One may easily attribute our condition of isolation to contemporary urban planning and find that its distressing effects are readily identifiable. A society that isolates neighbors from one another fosters a sense of numbness within its citizens. This loss of connection creates a spiritless community or what this paper will refer to as a loss of “civic life.” Civic life is a reference to the interdependent relationships citizens have in the context of organized society.<sup>1</sup> The idea behind civic life is that it begets the “common good.” Relationships amongst citizens form synergies that make the whole (the community) greater than the sum of its individual parts

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<sup>1</sup> See JAMES HOWARD KUNSTLER, HOME FROM NOWHERE 38 (1996).

(its citizens).<sup>2</sup> As James Howard Kunstler indicated, “a vital relationship [exists] between the character of our surroundings and the common good, that rights and responsibilities need a civic setting in which to dwell, and that such a setting is an identical setting of our lives, an actual place that must be worth caring about.”<sup>3</sup> The zealous American pursuit of rugged individualism, as embodied in our urban structure, has effectively paralyzed the interdependent relationships necessary to establish a community. Simply stated, American cities or suburbs are not worth caring about. An area consisting of cookie cutter housing tracts, endless strip malls, and drab office parks instills little civic pride in its citizenry because they convey the citizenry and its surrounding community are meaningless.<sup>4</sup> Instead, the citizenry recognizes their environment for what it is: a series of cookie cutter buildings centered around the automobile; not people.

A loss of civic life may very well be too abstract a concept for which an average person would develop much concern. It is the root of many of the issues that are seemingly too peripheral and attenuated for the nation to focus.<sup>5</sup> However, the loss of civic life and its isolation derivative are vividly manifesting their unavoidable consequences within the elderly population. Urban America isolates no other segment of the population so visibly. In addition, no other segment so clearly unveils the inefficiency and unsustainability of the physical make-up of American society. This paper will begin by discussing the inadequacies of our urban landscape in the context of the elderly population. Then it will discuss how our current property tax system and American jurisprudence’s failure to recognize “givings” has perpetuated the inefficient design of our cities. Finally, it proposes that a land value taxation system will remedy many of the social ills which exist under property taxation.

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<sup>2</sup> See KUNSTLER, *supra* note 1, at 52.

<sup>3</sup> See KUNSTLER, *supra* note 1, at 52.

<sup>4</sup> See KUNSTLER, *supra* note 1, at 39.

## THE ELDERLY SITUATION

### A. The Elderly's Effect on General Society

The uniqueness of the elderly population is that they profoundly affect the society around them. As the elderly grow older they increasingly drain society's resources without contributing much productivity in return. On an individual level, typical middle-aged persons must provide more monitoring and support for their aging parents. One may observe children are even more helpless and unproductive and require much greater attention. The difference is that children, at least, hold the potential of becoming increasingly more productive as they grow older. Children are an investment for the future. Society expects children to reach their full potential in adulthood and to care for those seniors that cared for them in their youth. In contrast, senior participation in the community does not consist of physical productivity, but rather, lends itself to the spirituality of the community. Senior involvement validates the life cycle process in the context of community and signifies that each point of that cycle is integral to existence of the community. Elderly community involvement is "essential to preserving the continuity and the vitality of American culture."<sup>6</sup> However, in consumer laden America where the only relevant issue is the bottom-line, any unprofitable segment of society quickly becomes forgotten.<sup>7</sup>

Despite middle-aged America's inclinations, senior citizens are increasing becoming a harder segment to ignore. Here are some statistics that demonstrate the large proportion of our population for which the elderly population accounts. Currently, one in eight Americans is age sixty-five or above.<sup>8</sup> The baby-boom generation will begin to enter retirement in 2008, which

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<sup>5</sup> Voters view issues such as class stratification, crime, de facto segregation, and contamination as having causes different from urban structure.

<sup>6</sup> See David J. Allor, Re-Planning the Future: Community Life in Retirement, Planners Web, Planning Commissioners Journal

<sup>7</sup> Although I do recognize that seniors have tremendous political power.

<sup>8</sup> Deborah A. Howe, Creating Vital Communities: Planning for Our Aging Society, Planners Web, Planning Commissioners Journal.

will account for thirty percent of the population being fifty-five years or older by 2020.<sup>9</sup> Ages eighty-five and older is the fastest growing age group and forty-eight percent of which requires functional assistance in daily living.<sup>10</sup> Fourteen percent of seniors between the ages of sixty-five and seventy-four require such assistance.<sup>11</sup> Clearly, the enormous size of the elderly population will compete as a major player for the resources society has at its disposal.

Even more alarming than the sheer size of the elderly population is the rapidly increasing proportion residing within suburbia.<sup>12</sup> In 1980, of those sixty-five and older, thirty-nine percent lived in the suburbs; an increase of twenty-six percent from 1960.<sup>13</sup> While the elderly currently may be able to financially support themselves within the isolation of their suburban homes, such a living arrangement is quickly becoming untenable. The costs of retirement are steadily increasing.<sup>14</sup> Specifically, home and health maintenance costs and property taxes are outpacing retirement incomes. Seniors will be unable to rely on government assistance due to the recent proposals to cut social service budgets on the federal, state, and local level.<sup>15</sup> In addition, the pool of taxpayers paying into such programs diminishes as more and more people reach the age of retirement. Lengthened life expectancies compound the financial crunch. An increasing share of senior citizens will live two entire decades into retirement.<sup>16</sup> The average life expectancy for Americans increased from 69.6 years in 1950, to 74.7 years in 1983.<sup>17</sup> Thus, senior citizens

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<sup>9</sup> See David J. Allor, Re-Planning the Future: Community Life in Retirement, Planners Web, Planning Commissioners Journal

<sup>10</sup> Deborah A. Howe, Creating Vital Communities: Planning for Our Aging Society, Planners Web, Planning Commissioners Journal.

<sup>11</sup> Howe,...

<sup>12</sup> Allor,

<sup>13</sup> Howe,

<sup>14</sup> Allor

<sup>15</sup> Allor,

<sup>16</sup> Allor

<sup>17</sup> Howe,

clearly will find it increasingly burdensome to fund their own survival and other segments of society will have to shoulder the financial burden.

Disturbingly, seniors' dire financial condition will envelope them into the economic stratification that suburban sprawl perpetuates. America has embraced the idea of "moving up."<sup>18</sup> However, the absence of economically diverse neighborhoods within suburban communities inextricably intertwines "moving up" with "moving out" to separate communities.<sup>19</sup> "Among 554 well-established suburbs in the 24 most populous metropolitan areas, 405 suburbs had declined in median family income, as compared with the entire metropolitan area, from 1960 to 1990."<sup>20</sup> Furthermore, "[b]etween 1980 and 1990, the number of suburbs whose family incomes were below 80 percent of the metropolitan median family income had increased fourfold, from 22 to 90,"<sup>21</sup> indicating a dramatic polarization among suburban communities. Due to their dwindling limited financial capacity, the elderly will find themselves unable to upscale their lifestyle to new suburban communities and will be trapped within deteriorating older suburban communities.

The most obvious source of support for the elderly in times of crisis is the immediate family. Middle-aged persons are going to have to devote to their parents an increasing share of their daily time. However, the suburban phenomenon has made time a scarce commodity. According to a study of sixty-eight U.S. metropolitan areas, drivers were stuck in traffic for approximately four and a half billion hours.<sup>22</sup> In addition to commuting to and from work, driving to the grocery store, and maintaining their residences, the middle-aged also have a

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<sup>18</sup> See Duany, *supra* note , at 44.

<sup>19</sup> *See id.*

<sup>20</sup> William H. Lucy & David L. Phillips, Suburban Decline: The Next Urban Crisis, *ISSUES IN SCIENCE AND TECHNOLOGY*, at 55, 56 (Fall 2000).

<sup>21</sup> *Id.*

<sup>22</sup> Oliver A. Pollard, Smart Growth and Sustainable Transportation: can we get there from here?, 29 *Fordham Urban Law Journal* 1529, 1535 (2002).

responsibility to chauffeur their children.<sup>23</sup> Rarely are cities situated so as to place residential areas within walking distance of parks or even schools, and, consequently, parents must drive their children to any extracurricular activities. This suburban arrangement sparked the advent of the “soccer mom.” Yet, dual incomes are increasing becoming necessary to support a family, and especially since the term family is more commonly covering grandparents.

Because we expend so much time and resources caring for those who are incapable of caring for themselves, society has an interest in keeping seniors independent for as long as possible. This may explain why assisted living has recently become a major competitor to nursing homes.<sup>24</sup> Assisted living facilities allow its residents to reside in the privacy of their own apartments but provide necessary services as their health deteriorates.<sup>25</sup> These programs are attractive to senior citizens because they “offer physical protections along with personal privacy and independence.”<sup>26</sup> Government is increasingly attempting to accommodate such facilities because they function on little state money.<sup>27</sup> Yet, a traditional urban framework would offer all such qualities along with providing the elderly the opportunity to live in a generation diverse community. Yet, the current arrangement of our living environment has impeded the elderly from living independent lives.<sup>28</sup>

## **B. The Elderly and the Automobile**

A key component to independent living is the freedom of movement. Senior citizens and all citizens alike must have the means to go to the grocery store, meet friends, go shopping, attend functions, or realize any other activity consistent with their daily life. Ironically, a device

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<sup>23</sup> Most school children take the bus or are driven by their parents.

<sup>24</sup> John Buntin, Make Room for the Elderly, *Governing*, 41 December 2000.

<sup>25</sup> Buntin, 41

<sup>26</sup> Buntin, 41

<sup>27</sup> Buntin, 41, 42.

<sup>28</sup> Deborah A. Howe, Creating Vital Communities: Planning for Our Aging Society, *Planners Web*, *Planning Commissioners Journal*.

specifically made for movement, the automobile, has proven to be a severe restriction on movement. The automobile itself is not to blame but America's unyielding reliance on it for transportation. The forces of low-density development and single-use zoning have made the automobile the only feasible means of transportation.<sup>29</sup> Walking, bicycling, or using public transport to accomplish necessary daily tasks simply are not viable options under current norms of development.<sup>30</sup> Thus, our current social framework excludes those who are unable to afford a car or are physically incapable of driving.

Our reliance on the automobile is demonstrably visible when a housing development is adjacent to a shopping center. Frequently, local ordinances mandate developers to erect a wall between differently zoned properties. A person living but fifty yards away from the shopping center must still utilize a car to navigate through the subdivision to a main artery, and then to the store's parking lot.<sup>31</sup> The walk from his parking space to the store entrance may be roughly equivalent to the walk from his home to the store had the developer not built the wall.

Perhaps nothing has been more influential in the car-dominated design of our landscape than the consistent employment of single-use zoning. Single-use zoning is local ordinances that separate land uses from one another.<sup>32</sup> Modern development consists of four major use designations: housing subdivisions, shopping centers (strip malls), office parks, and civic institutions.<sup>33</sup> The only linkage between each separate designation is the endless miles of roadways.<sup>34</sup> Because daily life activities encompass each use designation, citizens spend

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<sup>29</sup> Duany, 23

<sup>30</sup> Olver A. Pollard, III, *Smart Growth and Sustainable Transportation: Can We Get There From Here?*, *Fordham Urban Law Journal*, 1529 (2002).

<sup>31</sup> See Duany at 25.

<sup>32</sup> See Pollard, at 1534. At one time zoning only separated incompatible uses such as a polluting factory from residential housing. However, modern zoning separates everything from low and medium density housing to general offices from medical offices. See Duany pg. 10 n.1.

<sup>33</sup> Duany, at 5-6.

<sup>34</sup> Duany, at 7.

exorbitant amounts of time driving in between places and developers must tailor each destination to accommodate large quantities of automobiles.<sup>35</sup> The fact that highway driving accounted for over 2.6 trillion miles in 1998 is reflective of integral nature the automobile exerts upon our arrangement of living.<sup>36</sup>

### **B. Elderly Efforts to Keeping Pace with the Automobile**

Like all segments of American society, the elderly have everything riding on the automobile. They need an automobile to purchase the necessities of daily life such as groceries, cleaning products, or hardware supplies. In addition to necessities, the elderly need automobiles to maintain a social existence. Gatherings such as bingo, church, or even gambling excursions have served to replace traditional notions of community. The elderly simply are unable to walk to a town square or center plaza with the purpose of conversing and socializing with others in their locale due to the replacement of convening areas with parking lots. My college Spanish professor summarized the American seniors' condition best when he drew my classes attention to the large number of elderly frequenting Spanish city plazas and then inquiring why he never saw any seniors in his visits to the United States. Still a better illustration of the automobile's facilitation of the loss civic pride was an elderly woman who expressed delight in visiting to Walmart to see her friends.<sup>37</sup> No longer do we use our malls and shopping centers solely as private buildings for commerce. Instead, we use them as public gathering places that serve as woefully inadequate town squares to which only an automobile may reach.

Those elderly capable of driving or that at least have their driver's licenses, still experience a greater share of isolation than their middle aged counterparts. Inertia tends to limit

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<sup>35</sup> Duany at 7.

<sup>36</sup> Pollard, at 1535. From this statistic, one could figure that Americans averaged over 7.2 billion miles per day, which is equivalent to making forty round trips to the sun.

<sup>37</sup> I think I heard this as an anecdote from professor Kline.

senior driving. Hazardous road conditions generally deter seniors from driving.<sup>38</sup> In addition, seniors are more inclined to drive during the daylight hours where they drive significantly less than younger drivers.<sup>39</sup> Since retired seniors are driving less and, consequently, making less frequent visits to other use zones, one must deduce they are staying at home. Although the term “home” may have pleasant connotations, the reality of a home may be more akin imprisonment. To escape their reality, home dwellers escape boredom by watching television at all hours of the day.<sup>40</sup> The endless violence and crime reports shown on television perpetuate viewer perceptions that the outside world is harsh, dangerous, and an unpleasant place to spend time. Thus, living in an isolated island home creates an environment where we all are enslaved to an externally imposed fantasy world, but to which seniors are especially susceptible due to their extended hours within the home.

The elderly are keenly aware that they are a driver’s license away from “spend[ing] the rest of their days quarantined with their fellow nonviable members of society.”<sup>41</sup> Yet, to stage off this life paralyzing event, many elderly do their best to conceal their physical limitations.<sup>42</sup> As a senior undergoes the aging process, his ability to operate a motor vehicle becomes more and more diminished. Seniors experience a general waning in reflexes and coordination.<sup>43</sup> Arthritis contributes to slower reaction times decreasing the ability to avoid accidents during emergencies.<sup>44</sup> Decreased circulation to the brain, medications, or senior dementia may lead to mental inattentiveness and loss of judgment.<sup>45</sup> Glaucoma, cataracts and other eye conditions

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<sup>38</sup> Internet statistic cite

<sup>39</sup> Internet statistic cite

<sup>40</sup> Kunstler, 23.

<sup>41</sup> Duany, 123

<sup>42</sup> Duany, 123

<sup>43</sup> Internet statistic cite

<sup>44</sup> See id.

<sup>45</sup> See id.

impair vision, especially the ability to see peripherally.<sup>46</sup> Finally, the elderly commonly are hard of hearing which diminishes their ability to be aware of auditory warning signs such as sirens.<sup>47</sup>

Due to their many physical limitations, senior citizen motorists pose a very real and direct threat to themselves and all motorists on the road. The National Traffic Safety Administration found that, in 1996, the elderly comprised the highest driver fatality rates based on estimated annual travel.<sup>48</sup> The fatality rate for drivers age eighty-five and up was nine times as high as the rate for ages twenty-five through sixty-nine years old.<sup>49</sup> In 1997, the American elderly represented ten percent of all licensed motorists or 17.7 million.<sup>50</sup> This was a two percent increase from 1987.<sup>51</sup> As the baby boom generation reaches retirement, this trend will assuredly continue.

#### SPURRING ELDERLY FRIENDLY DEVELOPMENT

The discussion up to this point clearly indicates that the feasibility of walking or using public transit is minimal due to our communities are being so diffuse. The elderly are in desperate need of walkable cities, cities that provide public transportation and cities that do not segregate affordable housing from others. To attain each one of these goals, America must halt the outward expansion of asphalt into rural lands and, instead, develop inward to create high-density populations. The second half of this paper will explain how American tax policy has been a key component in fueling suburban sprawl and diffuse development. In addition, it will examine how a fundamentally different policy will curtail suburban sprawl and stimulate dense development.

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<sup>46</sup> See id.

<sup>47</sup> See id.

<sup>48</sup> Internet statistic cite

<sup>49</sup> See id.

<sup>50</sup> See id.

<sup>51</sup> See id.

## A. The Current Property Tax System

Nearly all American cities utilize the property tax system.<sup>52</sup> Essentially, this system taxes the buildings located on a specific parcel of land proportionately much greater than the tax on the land itself.<sup>53</sup> A government official (tax assessor) values the buildings on the land and subsequently the government taxes in proportion to the building's value.<sup>54</sup> Hence, the more a landowner develops his land, the greater his tax liability will be.<sup>55</sup> In conjunction with our current zoning laws,<sup>56</sup> this form of taxation has had devastating effects upon our cities.

### 1. *The Social Costs of Speculation*

The most obvious effects of the property tax are its penalization of development and encouragement of speculation.<sup>57</sup> The tax enables a landowner with a vacant lot to wait for the market value of their land to significantly increase before deciding to sell it to a party willing to develop.<sup>58</sup> These landowners are the driving force behind much of the vacant land located within America's downtown districts.<sup>59</sup> Such land has potentially high utility due to its proximity to connective infrastructure, public services and public amenities.<sup>60</sup> Yet, it serves as a parking lot because the landowner has no incentive to sell or develop due to the exceptionally low cost of keeping the land or "holding cost."<sup>61</sup> Thus, a vacant parcel of land downtown may have virtually no tax liability, even though the land's market value might approach one million dollars.<sup>62</sup>

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<sup>52</sup> J. Anthony Coughlan, Land Value Taxation and Constitutional Uniformity, 7 Geo. Mason L. Rev. 261

<sup>53</sup> See Kunstler, supra note , 197.

<sup>54</sup> See *id.*

<sup>55</sup> See *id.*

<sup>56</sup> See notes 27-31 and accompanying text.

<sup>57</sup> Kunstler, supra note , 198.

<sup>58</sup> See *id.*

<sup>59</sup> See *id.*

<sup>60</sup> See *id.*

<sup>61</sup> See *id.*

<sup>62</sup> See *id.* at 199.

This phenomenon of owners having the capacity to “horde” land for years on end sets the stage for suburban sprawl. The cumulative effect of speculation takes a significant amount of land off the market since speculators will not sell until their land value reaches a certain threshold.<sup>63</sup> The scarcity of land available on the market creates a greater demand and artificially high market prices.<sup>64</sup> Most of the remaining land supply is located in the periphery edges of development. Hence, developers divert their attention to this region because purchasing large parcels of farmland is much easier than conglomerating individual lots within more developed areas.<sup>65</sup>

## 2. *Facilitation of Urban and Suburban Decay*

Assuming a landowner does decide to develop his land, the property tax system provides incentive to build low quality structures and disincentive to maintain existing structures located on the land. As stated previously, the higher the buildings quality, the more the building is worth and, consequently, the greater the tax liability.<sup>66</sup> This policy gives an owner great incentive to build a structure that serves only its intended use and offers no aesthetic charm for the public realm. If it never rained, proprietors might even attempt constructing their business out of cardboard boxes. As if punishing owners for building durable well-constructed buildings was not sufficiently outrageous, our tax laws provide an affirmative incentive to let their structures decay.<sup>67</sup> The tax code presents owners with the opportunity to deduct depreciation of their buildings from their income taxes.<sup>68</sup> For these reasons, blighted buildings, lifeless strip malls and endless burger joints scar much of our American landscape.

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<sup>63</sup> *See id.* at 198.

<sup>64</sup> *See id.*

<sup>65</sup> *See id.* at 201.

<sup>66</sup> *See id.* at 197.

<sup>67</sup> *See id.* at 200.

<sup>68</sup> *See id.* at 198.

The legitimization and systematic encouragement of building decay has perpetuated the syndrome of suburban stratification where the middle class moves up and out leaving the elderly and poor behind in isolation.<sup>69</sup> A recent national study has indicated low-quality housing is the driving force behind suburban and urban decline rather than age of housing.<sup>70</sup> The study concluded “suburban decline usually occurs where there are large numbers of small houses with little aesthetic charm, where the houses are located in inconvenient settings, where there are few public amenities, and where there are often are no alternatives to automobile transportation.”<sup>71</sup> Property taxation makes it impossible to break out of this cycle because it perpetuates cookie cutter housing developments on the metropolitan periphery.<sup>72</sup> Moreover, it blocks structure reinvestment, which is an essential ingredient to suburban deterioration.<sup>73</sup> The reality of a limited life span for viable suburban neighborhoods is so ingrained in the national psyche that homeowners are often advised not to improve the value of their property above twenty percent of neighboring housing values.<sup>74</sup> The deteriorating character of the suburban neighborhood makes collecting on such an investment at resale doubtful.<sup>75</sup> Thus, the property taxation system has created an economically stratified landscape where the upper classes continually retreat to newer development while the middle class neighborhoods that the elderly inhabit transform into blighted and neglected regions.

One may more easily appreciate the absolute dysfunction of property taxation by examining how it has spawned a breed of reprehensible social parasites known as slumlords. Contrary to popular belief, rent money is not the bread and butter of a slumlord. Instead,

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<sup>69</sup> See *supra* notes 18-21, and accompanying text.

<sup>70</sup> See Lucy & Phillips *supra* note 20 at 57.

<sup>71</sup> See *id.*

<sup>72</sup> See *id.* at 58.

<sup>73</sup> See *id.* at 57.

<sup>74</sup> See *id.* at 58.

<sup>75</sup> See *id.*

slumlords cash in when the city condemns their property and compensates the slumlord under the law of eminent domain. The city must pay a premium price because he and other “hoarders/speculators” have created a state where land is artificially scarce and land market value reflects that scarcity. Of course, the slumlord’s cost of holding the building before condemnation was minimal since its decrepit character dictated such a low property tax. Hence, the slumlord is just a microcosm of the overall waste and deterioration that the property tax system fosters in our cities.

## **B. Givings**

The jurisprudential failure of American law to recognize the concept of “givings” has compounded the inefficient governmental and private decision making that the property tax system breeds. Givings are government actions that directly or indirectly confer benefits upon the private actor.<sup>76</sup> The concept of givings is the twin behind the Iron Mask takings has overshadowed within the kingdom of constitutional law. Proponents argue the same efficiency justifications and theories for which the constitutional drafters enacted the Takings Clause of the Fifth Amendment mandate a givings jurisprudence as well.<sup>77</sup> The Takings Clause forces the state to account for the costs it inflicts upon displaced private parties when it exercises its power of eminent domain.<sup>78</sup> This internalization of costs forces the state to act efficiently by limiting eminent domain proceedings to “when the aggregate benefit exceeds the aggregate cost.”<sup>79</sup> In a similar manner, the givings doctrine requires government to internalize benefits so it may operate under fiscal reality, which will compel individuals to invest efficiently.<sup>80</sup>

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<sup>76</sup> See generally, Abraham Bell & Gideon Parchomovsky, *Givings*, 111 YALE L.J. 547, 574 (2001).

<sup>77</sup> See *id.* at 553-554.

<sup>78</sup> See *id.*

<sup>79</sup> *Id.* at 553.

<sup>80</sup> See *id.* at 554, 581-82.

In the context of land-use, perhaps the best definition of givings is “any increase in the value of land ... arising from central or local government action, whether positive, e.g., by the execution of the public works or improvements, or negative, e.g., by the imposition of the restrictions on other land.”<sup>81</sup> This definition divides givings into three separate classifications, mirroring their takings counterpart. When the state grants a property interest to a private party, it performs a giving in the most obvious form; a physical givings. In *Pole Town Neighborhood Council v. City of Detroit*,<sup>82</sup> the City of Detroit perfectly illustrated a physical giving, when it transferred to General Motors land it had acquired from eminent domain proceedings.<sup>83</sup> The next category is regulatory givings where government regulation enhances the property value of private parties.<sup>84</sup> Regulatory givings are most visible zoning contexts such as where the government “upzones”<sup>85</sup> or grants a variance or exceptional use permit.<sup>86</sup> Finally, derivative givings exist whenever the state provides a physical or regulatory giving that indirectly increases the value of surrounding private property.<sup>87</sup> Landowners most notably receive derivative givings when the government installs nearby infrastructure, which increases the landowners’ property value.<sup>88</sup>

When government fails to account for givings a condition of fiscal illusion exists and influences the government to undertake expensive projects and improvements that are

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<sup>81</sup> Windfalls For Wipeouts: Land Value Capture and Compensation, 112 (Donald G. Hagman & Dean J. Misczynski eds. 1978).

<sup>82</sup> 304 N.W.2d 455 (Mich. 1981)

<sup>83</sup> See Abraham Bell & Gideon Parchomovsky, *Givings*, 111 YALE L.J. 547, 552, 568 (2001); see generally *Pole Town Neighborhood Council v. City of Detroit*, 304 N.W.2d 455, \_\_\_, 457 (Mich. 1981).

<sup>84</sup> See Bell & Parchomovsky, supra at 551, 563.

<sup>85</sup> Upzoning describes the situation where private property owners subject to a certain zoning ordinance benefit from its alteration. See Bell & Parchomovsky, supra at 550.

<sup>86</sup> See Bell & Parchomovsky, supra at 564.

<sup>87</sup> See Bell & Parchomovsky, supra at 551.

<sup>88</sup> See Bell & Parchomovsky, supra at 564.

economically inefficient.<sup>89</sup> When government bestows a benefit upon private land, the lands' property taxes fall far short of "recapturing" the benefit landowners receive on account of government action.<sup>90</sup> In effect, the rest of the population is forced to subsidize the landowners' windfall.<sup>91</sup> For instance, when the government installs a public works project, such as new park, it effectively is providing a derivative gift to land in close proximity to the development because it increases the land's value and rental prices.<sup>92</sup> The average worker or business owner will finance the project by paying taxes on labor (income tax), goods and capital (property tax).<sup>93</sup> However, the taxpayers' payment liability will not be limited to just subsidizing the government project. These same workers and business owners have the additional liability of paying higher rents and land prices to the very landowners whom were able to enjoy the increase in value due to the taxpayer's subsidization.<sup>94</sup> Hence, America's current system is "double billing" workers and business owners.<sup>95</sup> Not only do they pay taxes that support the various government works projects, but they also pay landowners increased rent and sales prices for which their taxes financed.<sup>96</sup>

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<sup>89</sup> See Bell & Parchomovsky, *supra* at 584.

<sup>90</sup> See Windfalls For Wipeouts: Land Value Capture and Compensation, 16 (Donald G. Hagman & Dean J. Misczynski eds. 1978) Property taxes commonly do not affect landowner's out of pocket costs because they tend to divert them to renters in the form of higher prices. See Windfalls For Wipeouts: Land Value Capture and Compensation, 112 (Donald G. Hagman & Dean J. Misczynski eds. 1978); Kunstler *supra* note , at 200; see also Fred Foldvary, *The Synthesized Georgist-Libertarian Perspective on Markets and Planning*, at <http://www.foldvary.net/works/uk11.html> (June 11, 2002).

<sup>91</sup> See Folvary *supra* note 76; see also Windfalls For Wipeouts: Land Value Capture and Compensation, 15 (Donald G. Hagman & Dean J. Misczynski eds. 1978) (defining "Windfall" as "any increase in the value of real estate--- other than that caused by the owner --- or by general inflation").

<sup>92</sup> See *id.*

<sup>93</sup> See *id.*

<sup>94</sup> See *id.* Under the property tax system, landowners find it easy to "shift" their tax liability to tenants by raising rents. See Windfalls For Wipeouts: Land Value Capture and Compensation, 112 (Donald G. Hagman & Dean J. Misczynski eds. 1978).

<sup>95</sup> Fred Foldvary, *The Synthesized Georgist-Libertarian Perspective on Markets and Planning*, at <http://www.foldvary.net/works/uk11.html> (June 11, 2002).

<sup>96</sup> See *id.*

In tandem with refusing to acknowledge derivative givings, government's failure to account for regulatory givings amplifies inefficient behavior. Zoning regulations restrict the nature of development on specific parcels of land. Essentially, government arbitrarily limits development through zoning.<sup>97</sup> This creates an artificial reduction in the supply of land.<sup>98</sup> In a fashion similar the "hoarding" effect perpetuated by speculators,<sup>99</sup> the resulting decrease of land supply raises land rents and values.<sup>100</sup> This gives private landowners the incentive to pressure government to exclude new entrants through zoning, which is known as "rent-seeking."<sup>101</sup> Consequently, zoning paralyzes the supply-side of land, and landowners use the land shortage to exploit its tenants.

Some may inquire why the common worker or business owner would sit idly when the present state of affairs redistributes wealth from their classes to landowners. The answer lies in the nature of our political processes. To gain a basis of understanding one must be familiar with these three relevant characteristics of the political process: (1) government officials seek to maximize their likelihood of maintaining power; (2) the collective action problem hampers the organization and political influence of large groups with diffuse interests; and (3) tight knit interest groups exert disproportionate political pressure "by offering [officials] campaign contributions, blocks of votes, selective information ... in exchange for favorable government

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<sup>97</sup> See Foldvary.

<sup>98</sup> See Foldvary.

<sup>99</sup> See Part \_\_\_\_\_

<sup>100</sup> See Foldvary. The Regulatory givings windfall complements the derivative givings windfall to the landowners. See *id.*

<sup>101</sup> See *id.*; see generally Bell & Parchomovsky, *supra* at 585-89.

policy.”<sup>102</sup> These three factors create an environment where small factions may easily exploit larger factions.<sup>103</sup>

Landowners owners are particularly apt to manipulate the political process. They, of course, wish to maintain their rent-seeking capabilities as well as deflecting the costs of givings on the government and its taxpaying constituents. As a group with concentrated interests and vast wealth reserves, they are able to effectively lobby government to preserve this system. Faced with a solid voting block and potential campaign contributions, officials appease landowners to maximize their political benefits with minimal fallout.<sup>104</sup> The advantage of such a course of action is that officials are able to hide the economic costs of windfalls by redistributing them to the public at large or “politically expendable beneficiaries of other government programs.”<sup>105</sup> Rarely will the taxpaying public revolt against government givings because they are such a small fraction of individual voter’s tax liability.<sup>106</sup> In addition, the general public has no access to information detailing the redistribution of wealth, due to the tendency of officials to inflate social benefits while dismissing social costs.<sup>107</sup> Consequently, government, at the behest of a landowning minority, continues to indulge in inefficient land-use practices.

### **C. The Solution: Land Value Tax System**

Perhaps no method so singularly cures the defects of the property tax system while synthesizing givings concepts than the land value tax system. An early American social reformer, named Henry George (1839-1897), developed the idea of a land tax system primarily

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<sup>102</sup> Daryl J. Levinson, *Making Government Pay: Markets, Politics, and the Allocation of Constitutional Costs*, 67 U. Chicago L. Rev. 345, 374 (2000).

<sup>103</sup> See *id.* (describing the interest group theory). It should be noted that Levinson focused on how a small interest group may influence the government to execute an inefficient taking which results in a givings to that particular group. See *id.* at 373-77. However, Levinson’s analysis is analogous to givings unaccompanied by takings as well.

<sup>104</sup> See Levinson *supra* note , 376.

<sup>105</sup> See Levinson *supra* note , 376.

<sup>106</sup> See Levinson *supra* note , at 377

<sup>107</sup> See Levinson *supra* note , 376-77.

as a means to depolarize the large wealth disparities that existed during his time.<sup>108</sup> George witnessed land barons reap exorbitant amounts of wealth from the increase of socially created land value.<sup>109</sup> He recognized that taxpayer money funded the unparalleled growth that contemporary industrial cities experienced and, in turn, financed the increase of socially created value.<sup>110</sup> George contended the land value tax raised revenue by tapping into or “recapturing” this unearned increment of wealth.<sup>111</sup> He also argued that such a tax was a much more desirable alternative to other forms of taxes such as excise, sales, and income taxes, which penalized productive activity and tended to “erode its base.”<sup>112</sup> For instance, sales taxes discourage consumers from buying goods and a decrease in sales results in lower tax revenue or, more pertinently, a tax on buildings serves as a disincentive to construct, improve or preserve structures and lower development leads to diminished property tax returns.<sup>113</sup> Essentially, George opined landowners had no entitlement to unearned value that the community had generated through public and private activity.<sup>114</sup>

Unlike the productivity taxes’ distorted effects upon economic decision-making,<sup>115</sup> land value taxation promotes the most efficient use of land or “the highest and best use from an economic point of view.”<sup>116</sup> Standard economic theory identifies taxes as not only burdening the economy by extracting money for the state but also imposing an additional “deadweight loss”

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<sup>108</sup> See Kunstler *supra*, note 202.

<sup>109</sup> See Kunstler *supra*, note 202.

<sup>110</sup> See Kunstler *supra*, note 202. This concern still exists today and is detailed in \_\_\_\_\_ where I discussed how workers and business owners are being “double billed.”

<sup>111</sup> See Kunstler *supra*, note 202; Windfalls *supra* note, at 400.

<sup>112</sup> Kunstler *supra*, note 202-03

<sup>113</sup> See Kunstler *supra*, note 203; J. Anthony Coughlan, Land Value Taxation and Constitutional Uniformity, 7 Geo. Mason L. Rev. 261.

<sup>114</sup> See Douglas W. Kmiec, Deregulating Land Use: An Alternative Free Enterprise Development System, 130 U. Pa. L. Rev. 28, 122 (1981).

<sup>115</sup> See J. Anthony Coughlan, Land Value Taxation and Constitutional Uniformity, 7 Geo. Mason L. Rev. 261

<sup>116</sup> Windfalls *supra* note, 401.

upon the economy.<sup>117</sup> Simply put, taxation raises costs and decreases output and investment, which prevents actors from allocating resources to their most valued uses.<sup>118</sup> However, deadweight loss is diminutive if the taxed resource is inelastic, meaning its quantity does not decrease substantially at a higher price.<sup>119</sup> Land supply is virtually inelastic.<sup>120</sup> Except for a few inconsequential examples, such as draining swamps or using dikes to replace water with soil, we are unable to expand or contract land.<sup>121</sup> Consequently, the fixed nature of land allows government to use land tax for public revenue without the deadweight loss from the misallocation of land uses.<sup>122</sup>

### 1. Land Value Taxation Incorporation of Givings Equity Principles

The principles underlying the concept of givings supports the very foundation of the land value tax system. The idea behind the tax is it “captures” the value that government generates through explicit investment (givings).<sup>123</sup> It should also capture the enhanced value of land that the synergies of private activities generate.<sup>124</sup> The value derived from locating in a thriving community is described as “socially created value.”<sup>125</sup> One need not delve into abstract theories of justice to conclude that the state’s supply of funds entitles it to enjoy the benefits its investment produces. Fairness dictates that society as a whole as receive the return on its investments rather than individuals whom rarely may be attributed with an increase in land value.<sup>126</sup> Although its entitlement to socially created value may not be as plain, it nonetheless should benefit from socially created value as well. The reason being that government offers

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<sup>117</sup> Foldvary supra note

<sup>118</sup> Foldvary supra note ,

<sup>119</sup> Foldvary supra note ,

<sup>120</sup> See J. Anthony Coughlan, Land Value Taxation and Constitutional Uniformity, 7 Geo. Mason L. Rev. 261

<sup>121</sup> See J. Anthony Coughlan, Land Value Taxation and Constitutional Uniformity, 7 Geo. Mason L. Rev. 261

<sup>122</sup> Foldvary,

<sup>123</sup> See J. Anthony Coughlan, Land Value Taxation and Constitutional Uniformity, 7 Geo. Mason L. Rev. 261

<sup>124</sup> See Kunstler note , at 197. *Contra* Windfalls supra note , at 15.

<sup>125</sup> See Kunster *supra* note , at 197.

more than physical investment. The existence of civilization depends upon its government to offer security and order. Hence, the private parties should not benefit from unearned profits that government makes possible through its management of a civilization.

## 2. Land Value Taxation Incorporation of Efficiency Givings Principles

Aside from an equity perspective, efficiency principles support land value taxation. Such a system will prove to be a formidable obstacle to speculation while fostering high-quality development. In addition, land value taxation will halt the unsustainable low-density development known as suburban sprawl.

### *i. The End of Speculation*

When government taxes land by location rather than by the land's development, private parties will find speculation to be a very expensive pursuit. Under the land value taxation system, land location is the only factor affecting tax liability not the nature of the development on the land.<sup>127</sup> Whether the land contains a high-rise building or a vacant lot has no affect its tax liability. As land location becomes more and more proximate to governmental improvements and areas of high socially created value, tax liability will increase. Prime real estate, usually centrally located, consequently will have high "holding costs."<sup>128</sup> This will pressure landowners in possession of such real estate to either develop their land to a point where the return on the land is greater than its tax liability or sell the land to a person with the ambition and imagination to make his ownership profitable.<sup>129</sup> Whatever the decision, someone will put the land to its best

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<sup>126</sup> See J. Anthony Coughlan, Land Value Taxation and Constitutional Uniformity, 7 Geo. Mason L. Rev. 261

<sup>127</sup> See Kunstler *supra* note , at 199.

<sup>128</sup> See Kunstler *supra* note , 198.

<sup>129</sup> See Kunstler *supra* note , 199. Of course, the landowner could chose to do nothing where the state would take possession of the property upon default of tax payments. See *id.* at 199.

use, which would usually be “profitable and socially beneficial” development.<sup>130</sup> Hence, the land value taxation system actively encourages dense development by filling in vacant space.

Opponents argue that land value taxation not only encourages high-density development but fuels over-development, leading to over-congestion.<sup>131</sup> They contend that open space, theatre districts, hotel districts, shopping areas and other social amenities will be unable to locate in central areas due to the higher tax liability.<sup>132</sup> The flaw in this theory is it fails to account for the increased supply of land that the land value tax system releases onto the market.<sup>133</sup> This increase in supply significantly lowers demand.<sup>134</sup> Reduced demand dictates a low purchase price on centrally located parcels.<sup>135</sup> In addition, land sellers capitalize the land value tax into the price of the land.<sup>136</sup> Purchasing centrally located property would entail a low entrance fee but a high “holding cost.”<sup>137</sup> While the low initial purchase price of land parcels allows landowners to purchase land for reasonable prices, the high holding costs encourage development. Yet the dilution of demand would mitigate over-development.<sup>138</sup>

In contrast, the property tax system actually encourages hyper-development. As previously described, hoarding contributes to short supply and excessive pricing of land. Landowners that purchase a parcel of land only can justify such an exorbitant purchase if they build skyward.<sup>139</sup> For this reason, one finds in American downtowns skyscrapers adjacent to parking lots. A more continuous unimposing skyline would flourish under the land tax system.

## ii. *The End of Low-Quality Structures*

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<sup>130</sup> Kunstler supra note , 199; Windfalls supra note , 402.

<sup>131</sup> See Windfalls supra note , at 402.

<sup>132</sup> See Windfalls supra note , at 402.

<sup>133</sup> See Kunstler supra note , at 200.

<sup>134</sup> See Kunstler supra note, at 200.

<sup>135</sup> See Kunstler, supra note, at 200.

<sup>136</sup> See Coughlan supra note ,

<sup>137</sup> See Kunstler supra note 200.

<sup>138</sup> See Kunstler, supra note , 200.

The land value taxation system's exemption of buildings would prove extremely beneficial to the quality of new and existing structures.<sup>140</sup> No longer would landowners attempt to minimize the value assessment of their buildings to mitigate their tax liability under the property tax system. Instead, they would have incentive to build durable structures that best serve their intended purpose. Durability increases the value of the landowner's specific property and alleviates potential costs of repair or redevelopment. The landowner's desire to spend as little as possible on upkeep and repair, will lead him to continuously reinvest in his buildings.

The combination of high-density and high quality construction is a giant step toward de-stratifying socio-economic classes and maintaining decent communities. Isolated housing tracts with little architectural integrity, which offer the optimal conditions for suburban and urban blight, will no longer be feasible.<sup>141</sup> The land valuation tax would redefine the character of middle class housing to small housing plots near public amenities. On account of its dense nature, such housing becomes much more accessible. Accessibility is conducive to the incorporation of public transportation. Furthermore, property owners will have incentive to reinvest in their property to increase its value, which is a key component to maintaining the viability of a thriving neighborhood.

The construction of high quality middle class homes and the reinvestment in those homes are the seeds to future affordable housing. Community evolution generally experiences a process where lower economic classes inhabit aged middle class housing.<sup>142</sup> Although the structures may be less desirable, the combination of high-quality construction and reinvestment prevents

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<sup>139</sup> See Kunstler, *supra* note , 199-200.

<sup>140</sup> See Kmiec, *supra* note , at 122.

<sup>141</sup> See Lucy & Phillips *supra* note 20 at 57-58.

<sup>142</sup> See Kunstler *supra* note , 201.

such housing from undergoing excessive decay.<sup>143</sup> This process is in stark contrast to the present cycles where the poor inhabit formerly middle class housing that have served their short life span and are now decrepit and lifeless.<sup>144</sup>

An increase in development and the elimination of the incentive to construct low quality structures will also generate an increase in affordable housing. As apartments occupy formerly vacant land, the supply of rental units will increase.<sup>145</sup> Landlords will enter into fierce competition to attract tenants.<sup>146</sup> Consequently, they will have an incentive to lower rents while raising rental housing quality.<sup>147</sup>

### *iii. The End of Fringe Development*

Land value taxation will dispel the fiscal illusion that has cloaked sprawl's inefficiency. The government will assess the value of private land as a function of the governmental amenities and improvements that surround it. This relieves the public from shouldering the entire financial burden of expanding the city's infrastructure for the benefit of a select few landowners. Instead, assessment of land tax liability would reflect all such governmental givings. As such, voters who own land on the outward fringe will have a tendency to reject governmental improvements or projects that would increase their land tax liability.

The land tax's elimination of two key windfalls that landowners receive under the property tax system may be of even greater salience for curtailing fringe development. First, landowners would no longer reap unearned government givings because the land tax liability would reflect the value of such givings. Second, tenants would no longer pay artificially high rental and purchase prices to landowners since an increase of land supply on the market would

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<sup>143</sup> *See id.*

<sup>144</sup> *See id.*

<sup>145</sup> *See Kunstler supra note , 201.*

<sup>146</sup> *See id.*

drive down any such prices. The absence of these two factors significantly diminishes any incentive landowners may have to push for adjacent governmental investment or to exhibit rent-seeking behavior. The concentrated group of landowners that so effectively used their wealth to manipulate the political process would lose the interests that bonded them. Thus, land value taxation will signify the extinction of a powerful landowning interest group pressuring government to fund sprawl development.

A misguided fear is that the land tax will accelerate fringe development. Opponents recognize fringe activity, such as farming, is typically land intensive and argue the land tax is especially burdensome because land is the tax's entire base. Yet, this argument fails to consider that land value tax liability is less a product of land quantity than land location. Government would minimally tax land in the hinterlands because they experience little governmental givings. In point of fact, cities account for ninety percent of land values.<sup>148</sup> No longer would farmers be able to enjoy increasing land value due to unaccounted governmental givings and to then "cash out" by selling to developers.<sup>149</sup>

#### ***4. The End of Zoning***

The irony should not be lost upon anyone that a civilization whose faithful commitment to the free market system won over rival command economies has imposed a system in which government centrally plans the design and makeup of its cities through zoning regulation. Zoning regulation is the anti-thesis to the free market because it arbitrarily limits development. Economists agree zoning serves as a substitute for taxation because, like taxation, it imposes costs.<sup>150</sup> Zoning is a "taxation in substance if not form" on development.<sup>151</sup> Development is an

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<sup>147</sup> *See id.*

<sup>148</sup> *See* Kunstler *supra* note , at 201.

<sup>149</sup> *See id.*

<sup>150</sup> *See* Foldvary *supra* note ,

elastic resource because “its quantity decreases substantially if its price is higher.”<sup>152</sup>

Consequently, zoning produces an enormous “deadweight loss” since it “taxes” an elastic resource.<sup>153</sup>

The social ills to which zoning laws were a rational reaction would not present the same issues under a land value tax system. In contrast to European cities, which underwent centuries of evolution, American cities, in the matter of a century, went from wilderness outposts to metropolises with populations in the millions.<sup>154</sup> Industrialism dominated the city landscape and turned city life into a noisy, filthy “hell on earth.”<sup>155</sup> America used zoning as a way to separate industry’s horrible externalities from housing.<sup>156</sup> Yet, the land tax would separate industry from residential or mixed use areas out of efficiency mechanisms. Simply put, industrial complexes and plants that use a considerable amount of land would find locating in a central prime real estate to be economically impracticable. Such industries could only justify locating in areas where their needs for minimal infrastructure are met. Moreover, new technology has diminished the uncleanness and general unpleasantness of many types of industrial plants. Thus, zoning has outlived its necessity.

#### CONCLUSION

In tandem with current zoning laws, the property tax system’s encouragement of speculation and decay has spawned a condition where the citizenry is increasing disconnected from each other and a sense of place. The elderly are particularly susceptible to the ills of sprawl development. Their increasing inability to drive has made home living nearly impossible and

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<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *See id.*

<sup>154</sup> *See* Kunstler *supra* note , at 25.

<sup>155</sup> Kunstler *supra* note , at 25.

<sup>156</sup> *See* Kunstler *supra* note , at 201.

has strained other members of society attempting to aid the elderly in survival. Moreover, the elderly's increased numbers will significantly diminish their financial reserves, increasing their inability to move up and out with the rest of their community. Consequently, they are stratified into a low socio-economic class which is forced to live in communities that are past their shelf life.

Land value taxation may be the first block toward building senior friendly environments. Its incorporation of givings principles pressures communities to centralize and use land efficiency. Under the land tax, a grocery store need not be a drive away but may be right below a senior citizens low rent apartment. Furthermore, dense developments facilitates the installation of public transportation which will allow the elderly to divert their depleted funds to more useful resources such as health insurance or mortgage payments. Thus, a land tax will be of primary importance to increasing the independence of the elderly and instilling an overall civic pride.