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Regular Paper

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John L. Crompton

Executive Summary

Large public parks in the United States emerged in the 1850s and 1860s with the development of Central Park in New York City and Prospect Park in Brooklyn. Their development was predicated on the conviction that they would be self-financing and not be a drain on the public purse. To meet this criterion, the financing plans for both of them embraced the concepts of excess condemnation and benefit assessments. Because these two parks were the high-profile landmark bellwethers that inspired and informed widespread adoption of public parks by cities throughout the U.S., the two financing vehicles were widely emulated.

The use of excess condemnation essentially ceased early in the 20th Century when the courts ruled that eminent domain was an abrogation of private property rights and unconstitutional when it was used to take land from an unwilling seller and subsequently re-sell parts of it to private interests for a profit. Nevertheless, in contemporary times its core principle has re-emerged in three different forms: the property lease model, which links a park with income-producing property that provides initial capital and/or dedicated ongoing resources to maintain and operate the park; reimbursement clauses in parkland dedication ordinances, which enable parkland to be acquired and developed ahead of development by using certificates of obligation or general obligation bonds for which a city will subsequently be reimbursed from the fees received from future fees; and tax increment funding, by which proximate property owners ostensibly pay for redevelopment costs rather than general taxpayers. Instead of funding parks with taxes collected citywide, benefit districts were used to levy assessments on properties within the use radius of a park. The tax was apportioned according to a formula reflecting the proportion of benefits accruing to each property

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owner. In contemporary times, local governments may similarly facilitate a majority of property owners agreeing to assess themselves an additional property or sales tax to pay for a higher level of service. Alternatively, businesses may do this by establishing a Business Improvement District, whereby businesses levy an assessment on themselves to develop or upgrade a park.

Keywords

Excess condemnation, benefit districts, parks, financing

Parks are often regarded by elected officials as “wants” rather than “needs,” and as “discretionary” rather than “core” facilities. In addition, the cost of acquiring land and subsequently developing it into a new park is frequently perceived to be high. These factors make it difficult for advocates to persuade jurisdictions to create new parks. In contrast, if new parks can be constructed without recourse to financing from general taxation, then it is likely that elected officials will be much more supportive of developing them.

It has been consistently demonstrated that, in many contexts, parks enhance property values (Crompton & Nicholls, 2019). However, the increments of property tax attributable to parks typically go into the general fund along with all other property taxes. While this results in enhanced tax revenue to local governments, most of the windfall gains created by the park accrue to owners of proximate properties. In the context of New York City, it has been argued: “We need to find a way to stop absorbing the cost of creating economic value, while being left out of the upside...Money has been left off the table. We don’t want to do that anymore” (Dwyer, 2017, p. 14).

This paper describes the concepts of excess condemnation and benefit districts, which were the most prominent financing vehicles used to develop the pioneering urban parks of the mid-19th century. Their distinctive characteristic was “value capture,” (i.e., the increments of value created by the parks were retained in a separate account to pay for them so there was no recourse to general taxation). The paper draws upon this historical precedent to describe how adaptations of these concepts can be used in contemporary society.

In many of today’s communities, the dominant political philosophy is “fiscal conservatism,” which means a reluctance to raise taxes. The funding principle that emerges from this perspective is “those who benefit from services should pay for them.” This epitomizes the environment which created the excess condemnation and benefit assessment vehicles, which suggests the principles embedded in them are congruent with, and are highly relevant to, the prevailing contemporary political climate.

The Emergence of Urban Parks

The world’s first urban parks emerged in England at Regent’s Park in London (1811-1826) and Princes Park in Liverpool (1841-1844) (Crompton, 2004, 2006, 2007). There was no general enabling legislation authorizing municipalities to purchase land for a park (Lasdun, 1991). Consequently, these pioneering parks were central elements in speculative private real estate developments in which proximate property owners received exclusive access to the park for an annual fee, so they were not public

parks. They were funded by developers acquiring a large acreage of land and allocating between one-quarter and one-third of the site around the periphery for the sale or lease of lots for the construction of up-market residences for wealthy residents. It was anticipated that the attraction of the park would raise the price of lots to a level where the venture would be a profitable real estate development.

Subsequently, park building shifted from private developers to government entities commencing with Birkenhead Park, which was completed in 1847. The lack of generic enabling legislation meant that a separate Act of Parliament was needed to authorize each proposed park, which was a cumbersome process. Further, the prevailing political sentiment was that parks should not be a drain on the public purse. These constraints meant that the proximate real estate model remained the dominant vehicle for funding urban parks. The modified goal was for residences to generate sufficient revenue that a park would be constructed and operated at no cost to the public treasury.

In the United States, some communities had set aside small parcels of open space, but large public parks did not emerge until Central Park in New York City and Prospect Park in Brooklyn were developed in the 1850s and 1860s. They were inspired by the public parks in England, and were prototypes that were subsequently emulated in cities across the U.S. Their development was predicated on the conviction that they would be self-financing. To meet this criterion, mechanisms were needed that would capture the appreciated real estate value increments that a park would create, and use them to pay for the park's land acquisition and development.

The preliminary financing plans for both prototype parks embraced the concept of excess condemnation so they could emulate the English real estate model. They also used benefit assessments, because it was the dominant contemporary mechanism for financing public projects in major cities. Both of these vehicles directly captured the dollar increments of value that the parks created for adjacent properties. Because these two parks were the high-profile landmark bellwethers that inspired and informed widespread adoption of public parks by cities throughout the U.S., the two financing vehicles were widely emulated.

Excess Condemnation

Almost all 19th Century parks in the U.S. were acquired through eminent domain. Excess condemnation (sometimes called "recoupment condemnation" [O'Brien, 1942]) was the taking of more land through eminent domain than was necessary for a park, selling or leasing the balance of the land when the park was created, and using the profit from the transactions to finance the project. This model closely resembled the mechanism used to finance parks in England. The justification was that the increased value of surrounding land created by a park should be captured by the public and not by the property owner (Doell & Thompson, 1930). The state says:

We the state spend the taxpayers' money upon your land ... which will be greatly benefited in value. The benefit will not be an unearned increment, but on the contrary, it will be an earned increment. That increment will not be your increment, but an earning by money paid by taxpayers. We propose that those who sow shall reap and that the taxpayers' money having produced the increment, the taxpayers shall receive the return, through the state. (Cushman, 1917, p. 16)

Excess condemnation was authorized by constitutional amendment in eight states, while an additional thirteen states had statutes authorizing it (Huus, 1935). The New York state constitutional amendment of 1913 was typical:

The legislature may authorize cities to take more land and property than is needed for actual construction, in the laying out, widening, extending or relocating parks, public places, highways or streets, provided, however, that the additional land or property so authorized to be taken shall be no more than sufficient to form suitable building sites abutting on such park, public place, highway or street. After so much of the land or property has been appropriated as is needed therefor, the remainder may be sold or leased. (Weir, 1928, p. 488)

The Special Committee on Public Parks (1852), which was established to recommend a site for a large urban park in New York City, preferred the Central Park site to the alternative of Jones' Wood in part because of the greater extent of border it offered for creating prime real estate sites that could be sold to pay for the park. The Committee stated: "The amount to be paid for Central Park will also be reduced, or returned to the city treasury, by the amounts received from time to time, for sales of sites upon the borders of the park" (p. 1486).

However, for reasons that are unclear, when the design competition for Central Park was announced the concept of border real estate lots was not incorporated. Rather, the direct capture of value was confined to benefit assessments. In hindsight, the 1884 Commission evaluating the financial implications of establishing six new parks in The Bronx stated:

In Boston, Philadelphia, and other cities more land having being purchased than was absolutely required, the surplus was sold at an advanced valuation, producing from five to ten times the amount originally paid; for this land, fronting on to the parks, constituted the most valuable portion of the property. If, in the case of Central Park, a space extending to a width of 500 or 600 feet from the present boundary had been included in the area appropriated, and disposed of five, six or ten years after the passage of the bill, enough would have been realized from the sale to have paid for all the land taken. (Commission to Select and Locate Lands for Public Parks, 1884, p. 63)

The initial land purchase authorized for Prospect Park in 1860 was amended in 1865 when Calvert Vaux was invited to review the original plan and resuscitate the project after the Civil War. His revised plan resulted in an excess condemnation, because approximately 100 acres of the original purchase became surplus to requirements. Vaux noted that these lands were "remarkably well-adapted for dwelling purposes" and their "value has been much improved" (Brooklyn Park Commissioners, 1872, p. 354). Their availability for the development of "first-class dwelling houses" appeared to provide the commissioners with a fortuitous opportunity to capture the added value the park was creating and use it to reduce the massive capital outlay of \$9 million. However, for multiple reasons, these plans did not come to fruition (Brooklyn Park Commissioners Annual Reports of 1872, 1882, 1885, and 1895).

Why the Use of Excess Condemnation Declined

Ostensibly, excess condemnation appeared to be a valuable vehicle with which cities could directly capture revenues and use them to fund parks. In the latter half of the 20th century the principle (without eminent domain authority) became common practice in the U.S. among private developers of residential golf courses and marinas (Crompton, 2019). However, it had five major failings.

First, the real estate model of financing parks involved a high level of risk. It has been shown that for various reasons in a majority of the English cases, the proportion of park costs covered by revenues from house sales was far below expectations (Crompton, 2020). This risk was similarly inherent in excess condemnation in the U.S., and in 1917 it was highlighted in a review of a substantial number of excess condemnation projects:

The most definite and accurate conclusion which can be drawn regarding the moneymaking power of excess condemnation is that sometimes it is financially profitable and sometimes it is not (p. 181). . . It is safe to say that scarcely a single project of excess condemnation has been carried out in which the city has not found itself confronted sooner or later by unforeseen difficulties imperiling, in greater or lesser degree, the financial success of the undertaking. (Cushman, 1917, p. 191)

Second, it was pointed out, “It might be subject to great abuse. It places very drastic powers in the hands of those boards that are authorized to use it, with great opportunity for political maneuvering and corruption” (Doell & Thompson, 1930, p. 24). The powers of local jurisdictions in the U.S. are for the most part proscribed by state legislatures, which have generally been unwilling to grant powers of general real estate operation to municipalities. There is concern that the suspicious, conventionally-minded public would be skeptical of authorizing public officials to “wheel, deal, and manipulate” in commercial property transactions.

Third, it was a drastic invasion of private property rights depriving abutting owners of a part of their property; ousting them from any share in the direct enhanced value of that property; compelling them to seek at much inconvenience a new location; and then, adding insult to injury, selling the land taken from them to another (Doell & Thompson, 1930; O’Brien, 1942).

Fourth, the politically influential private real estate industry strenuously opposed the public sector engaging in competition with it.

Fifth, even in states which had constitutional authority, the courts subsequently ruled that using excess condemnation to recoup the public investment was outside the concept of public use and was invalid under the 14th Amendment to the Constitution. In a typical ruling a court in Ohio stated: “If it means... that the property may be taken for the purpose of selling it at a profit and paying for the improvement, it is clearly invalid” (O’Brien, 1942, p. 471). The court pointed out that “use by the public” was impossible when the city intended later to dispose of the property it condemned to the private sector. The financial need of a city did not constitute a public purpose sufficient to justify condemnation of individual residents’ land.

Contemporary Adaptations of Excess Condemnation

The use of excess condemnation essentially ceased when the courts ruled that eminent domain was an abrogation of private property rights and unconstitutional when it was used to take land from an unwilling seller to subsequently sell parts of it to other private interests for a profit. Nevertheless, its core principle has re-emerged in three different forms: Property lease model; reimbursement clauses in parkland dedication ordinances; and tax increment funding.

Property Lease Model

The property lease model links a park with income-producing property that provides initial capital and/or dedicated ongoing resources to maintain and operate the park. Three illustrations illustrate its contemporary manifestations.

The most enduring example is Mission Bay Park in San Diego, which commenced in 1948 (Garrick, 2018; San Diego City Attorney, 2008). It is the largest man-made aquatic park in the U.S., consisting of 4,235 acres, of which 46% is land and 54% is water, and has 15 million visits annually. From 1945 to 1962, the city, with state and federal government aid, dredged and filled to create the landforms in the park. When it was completed, the city established two guiding financing principles: (i) There would be no permanent residential development or any private ownership of land in the park; and (ii) Commercial leaseholds should not exceed 25% of the land area or 6.5% of the water area.

These principles assured that most of the area would be available for public recreational use. The intent was that the lease revenue would be used to finance the park's operations and any surpluses would go to fund-enhanced infrastructure and other capital developments. Unfortunately, the charter statute establishing this arrangement contained a clause that allowed the city manager to request the city council to suspend the compact if the city needed the surplus funds to maintain other city services. Inevitably, this loophole was used, and the "surplus" money was diverted to pay for other things, so by 2008 only 8% of Mission Bay lease revenue was spent improving Mission Bay, and 92% was used elsewhere.

In November 2008, the residents of San Diego passed Proposition C, which they amended with Proposition J in 2016. These amended the city charter so the first \$20 million of the lease revenues went into the city's general fund, while everything above that amount was split 65% for Mission Bay Park upgrades and 35% for projects in the city's six other regional parks (Balboa, Chollas Lake, Mission Trails, Otay River, Presidio, and San Diego River). Thus, the original intent of the Public Benefit Corporation Model was partially restored.

Brooklyn Bridge Park is an 85-acre park on the Brooklyn side of the East River in New York City. It is constructed on six piers and has revitalized 1.3 miles of Brooklyn's post-industrial water front. It was opened to the public in phases starting between 2010 and 2018. It offers stunning views of the Manhattan skyline and the Statue of Liberty. The city contributed \$65 million and the state \$85 million to construct the park. The Memorandum of Understanding creating the park signed by the state governor and the city mayor in 2002 required its projected annual operating costs of \$15 million, and the en masse replacement of the rotting piers on which it was built at a cost of several hundred million dollars with provision for their regular maintenance, should come from lease payments and property taxes from developments on the site: "All revenues,

including rent and payments in lieu of taxes derived from commercial development or existing commercial uses within the project area shall be dedicated to the maintenance and on-going operational needs of the project” (Memorandum of Understanding, 2002, p. 5).

To fulfill the terms of the legislation, the city and state created a nonprofit entity called the Brooklyn Bridge Park Development Corporation. It sold the development rights (i.e., the right to build on designated sites in the park), leading to the construction of:

- Two high-end residential condominium towers each on a 10,000-square-foot footprint, containing a total of 430 residential units at Pier 6
- A 225-room hotel and 150 residential units at Pier 1
- 400 residential units, 80,000 square feet of retail/commercial space, and 500 parking spaces in a converted warehouse close to Pier 6
- Retail/commercial in converted coffee warehouse structures with 350,000 gross square feet
- 130 residential units with ground floor retail on a 10,000-square-foot area close to the Manhattan Bridge.

In total, the development elements occupy approximately 8 acres which is about 10% of the total land area. These five sites generated \$200 million in up-front payments, and about \$20 million a year thereafter for ongoing maintenance and improvement of the park (Doctoroff, 2017).

A similar model to the Brooklyn Bridge Park was used to redevelop the 550-acre Hudson River Park, which is the second largest park in Manhattan after Central Park. Legislation passed in 1998 provided for the city and state of New York to contribute land that they owned on the largely derelict Hudson River waterfront to the Hudson River Park Trust, which was charged with transforming the site into a park comprised of a continuous strip of green, with a bicycle path and piers for recreation. As a non-profit organization, it had to be self-financing. While the city and state contributed a major proportion of the \$500 million capital cost, the Trust also had to raise large amounts of capital.

It did this and covers its operating expenses with revenues emanating from three nodes: Commercial/retail property leases in the park; concession operations along the 4.5-mile park; and selling air rights whose values increased dramatically as the park evolved (Friends of Hudson River Park, 2015). The selling of air rights for off-site development was authorized by a State Act. The New York City Council then approved the sale of the new air rights for \$100 million, which was used to replace the rotting marine pilings supporting the park. This was especially contentious, because it created a threatening precedent. New York City zoning had never conferred air rights on parkland. If this State Act is used to justify adding bulk to the buildings surrounding city parks, then it is likely to diminish the appeal and usefulness of the city’s other parks and open spaces.

Clearly, there are trade-offs in these kinds of arrangements. The nature of protests from some park advocates when the project first emerged was captured in the following statement:

In the park-starved Brooklyn Heights section of New York...Some residents have argued for a park that is free of commercial activity and which is maintained by the city or state. But state legislators insisted that the park be financially self-sustaining. The most likely result is that the “park” will include a mix of restaurants, offices, and a hotel or conference center. How much of this extremely scarce city green space will be consumed by development in the name of sustainability? (More, 2002, p. 70)

Whenever a proposal emerges to use park land for some other purpose, invariably there is a public outcry. In an ideal world, most park supporters would protest against surrendering some of the potential park acreage to commercial use, but the key question is: If this income stream was not forthcoming, would it be replaced by tax funds? In many cases the answer is no, suggesting the park would not be constructed. In that situation, a large majority of park advocates likely would support the presence of the commercial elements. If the development's income stream is the mechanism for substantially enhancing and sustaining a park, then there is likely to be greater public tolerance for such a project.

Reimbursement Clauses in Parkland Dedication Ordinances

The wisdom of acquiring land ahead of a park system's needs when it is relatively inexpensive is widely recognized, but such visionary action is rare. It requires current office holders to support investment of tax funds on projects that will not come to fruition for a decade or more in the future. Hence, while the benefits accrue to future officials, current elected officials incur the political cost of raising taxes—a situation that is not appealing to most.

The inclusion of a reimbursement clause in park dedication and/or impact fee ordinances offers a resolution to this political conundrum. Many communities have passed dedication ordinances, because they accept the principle that new parks should be financed by new homes built in the area that have created the demand for them. The ordinances require developers to provide land or a fee-in-lieu of dedicating land, and a development fee to transition the land into a park, which are exclusively used for the acquisition and development of parks. Most of the time communities opt to take fees-in-lieu because the amount of land required to be dedicated is too small for practical use as a park, or it is flood plain or detention basin land that developers could not use but that is also inferior for use as a park. When a threshold amount of revenue from fees has accrued, a community then seeks to buy land for a park. Unfortunately, by the time this threshold is achieved it has become too expensive and exceeds the revenues available because land prices have risen as the intensity of development in the area has increased.

To avoid this situation, a reimbursement clause should be inserted into the ordinances. A typical clause states: “If the city acquires park land in a zone in which a fee-in-lieu is paid, the fee may be used to reimburse the city the costs of the park's acquisition and development.” This enables a city to buy parkland ahead of development. It will subsequently be reimbursed from the fees received from future development.

Negotiations with landowners at times when activity in the real estate market is slow, when a bargain sale becomes available, or when the land is beyond the community's existing developed areas, may result in good park land being purchased

at a relatively low price. It will also be easier to acquire substantial tracts of (say) 50 to 300 acres during this time, than after development extends to these outlying areas. In effect these acquisitions represent excess capacity to the community's current needs. Adopting this approach is likely to be supported by developers, because the existence of parks makes new developments more attractive to homeowners.

Tax-Increment Financing Districts

The revenue to meet debt payments for tax increment financing (TIF) bonds comes from incremental increases in property values created by the project. The original intent was that a TIF should be used to redevelop areas of urban decay and blight, but in most states its use has been broadened so it can facilitate economic development in any context rather than only in decaying urban areas. It has become especially appealing in "greenfield" contexts, because they have relatively low property tax assessments and generate no sales tax. Hence, their development generates relatively large tax increments.

TIFs tend to avoid political controversy because they appear to rely on property taxes that the park project directly creates, so existing taxes are not being used to build/renovate the park. Ostensibly, they address the opportunity cost criticism that frequently emerges in park project debates, that is, they are "discretionary" facilities and tax revenue should only be used for "necessary" projects. Advocates argue the proximate properties pay the redevelopment costs not general taxpayers, since the increments of tax revenue would not exist without the park project that generates them. There are two potential fallacies in this argument.

First, it assumes no new development would occur at that site without a TIF. If the park site simply attracts new private development around it that would have been constructed either at that site or elsewhere in the community without TIF funding, then tax revenue is not new, it is simply diverted. The key question is: Does growth in the TIF area come at the expense of other areas in the community?

A second common fallacy is a failure to recognize the level of risk a municipality is accepting. A challenge with TIF projects is the uncertainty of the future increments of revenue because they are dependent on the pace and growth of future real estate development. In effect, a municipality is gambling the increments will be sufficient to meet the annual bond repayments. Too often, the projections are overly optimistic. Thus, lenders are usually offered protection by the city committing to meet shortfalls in the incremental revenues needed to meet debt repayments. If TIF revenues are insufficient to make any of the annual interest payments, then the jurisdiction has to draw from its general fund.

Benefit Assessments

Benefit assessments became widespread in New York City in the 1830s when the city needed extensive funds to accommodate its rapidly expanding population (McNeur, 2014). Because there was no public transportation and only the wealthy could afford private carriages, most people's lives were spent within walking distance of their dwelling, so public works tended to benefit only local people. Hence, it appeared equitable to finance them by levying assessments on those properties within the use radius, rather than paying for neighborhood amenities with taxes collected citywide.

When the use radius was determined, a benefit tax was fixed on each parcel of property within it, and bonds or certificates of indebtedness were sold on the security of the income from the benefit assessments. Importantly, these types of bonds were considered to be analogous to a user fee. They did not count toward a city's debt ceiling and did not lessen the general bonding capacity of the whole community. The justification for benefit assessments was that they:

Compelled the property owner to give over to the city that which the city has earned and can fairly claim. He loses nothing that was ever his. He is merely prevented from enjoying an unexpected benefit that never belong to him and which he had no more share in producing than any other member of the community. He is in the position of a man who had hoped that that a rich relative would bequeath him a sum of money and was disappointed. (Cushman, 1917, p. 20)

Benefit assessments had two major advantages over excess condemnation that accounted for their wider popularity. First, they provided the same outcome (i.e., paying all or a given proportion of the cost of developing a park) without landowners losing possession of their properties, which occurred when a city acquired full title to the land through eminent domain. Second, whereas excess condemnation captured a direct park premium only from lots immediately abutting a park, benefit assessments directly captured premiums from proximate properties that were beyond the first block.

Benefit assessments were the prevailing funding mechanism in New York for public projects. However, as the city expanded, the size of the projects needed to serve it became larger, and opposition to the assessments from large landowners became increasingly strident. While they were appropriate for funding neighborhood parks, the size and attractiveness of the new genre of large urban parks pioneered by Central and Prospect Parks extended their geographical reach beyond the immediate neighborhood and impacted a much larger segment of the cities. Consequently, some argued it was more equitable for a broader segment of the city to pay for them.

Large landowners succeeded in persuading the New York legislature in 1840 to pass a law limiting benefit assessments to no more than one-half of the property's value. Thus, the 1852 Committee charged with evaluating the relative merits of the Jones' Woods and the Central Park sites alluded to a possible compromise position, whereby benefit assessments would pay one-third or one-half of the land purchase cost for whichever site was selected. This compromise was subsequently adopted. When the initial 624 1/2 acres for Central Park was purchased in 1856 for \$5.169 million, one-third of this cost (\$1.657 million) was provided by benefit assessments. To make the amounts less contentious, the assessments were spread over a considerable area of 1,894 acres, stretching from 34th to 120th streets and almost to Second and Eleventh avenues (Tuttle, 1907). The distance from the park to the outer boundary of the assessment district shown in Figure 1 ranged from 2,200 to 6,600 feet, averaging about 2,760 feet (Tuttle, 1907). This aroused protests from those on the fringes of the assessment zone, who doubted they would receive any immediate benefit from the park (Rosenzweig & Blackmar, 1992).

Central Park Assessment District Boundaries

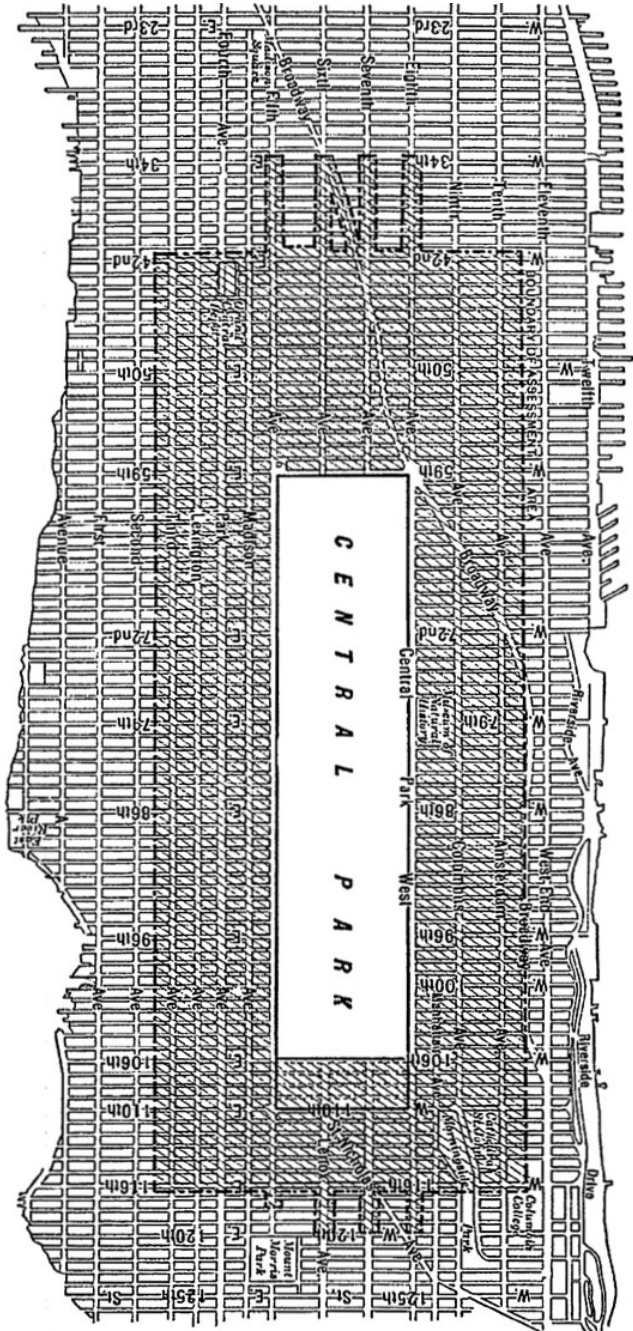


Figure 1. Central Park Assessment District Boundaries. Source: Lewis, N. P. (1923). *The planning of the modern city*. New York, NY: John Wiley.

The Central Park debate over the allocation of costs was repeated in Brooklyn in the context of Prospect Park. There was broad consensus for developing a major park, but the question of assessment divided the city (Simon, 1972). The original benefit assessments of \$480,392, would have been 46.1% of the land costs, but these subsequently had to be amended when the courts ruled that the City of Brooklyn's authority was limited to its borders and it could not levy the proposed benefit assessments of \$243,737 on properties located in the city of Flatbush which abutted part of the park (Simon, 1972). This meant the entire area south of the park and a portion of that on the east and west sides was not subject to benefit assessments, even though these property owners presumably received the same benefits as those inside the city. The removal of properties in Flatbush resulted in the benefit assessment accounting for 38.5% of the land acquisition costs, rather than the intended 50%. The zone on which the assessments were levied is shown in Figure 2. It comprised 1,273 acres. Its width averaged 2,800 feet and ranged from 2,200 feet to 3,500 feet (Tuttle, 1907).

At both Central Park and Prospect Park, the benefit assessments were limited to the capital cost of land acquisition and did not extend to the cost of constructing a park on the land or to park operating costs which were met by citywide general taxes.

Applications in Minneapolis and Kansas City

The high profile of Central and Prospect Parks encouraged other cities to use benefit assessments to finance parks. The city that used benefit assessments for parks most pervasively was Minneapolis, which arguably has the finest park system in the country. Minneapolis' statutory authority establishing this vehicle was incorporated in its original park enabling act in 1883 (Brecher & Brecher, 1963). The Elwell law passed by the legislature in 1911 confirmed the authority to use this vehicle and it was the principal tool used in the acquisition and improvement of the city's neighborhood parks. For example, during the five-year period from 1920 to 1924, 26 park projects were developed either wholly or in part through the "Park Elwells" as they were called. The law permitted the full cost to be levied against the benefited properties, but authorized the city council to assume a proportion of the cost not to exceed one-third of the total. In 1957, the law was amended to increase the city's authorized share to 50%. Between 1950 and 1963, the Park Board issued \$3.11 million in Elwell bonds to help finance 25 projects. The assessments were graduated so the highest taxes were paid by properties closest to the park. They were most frequently paid over 10 years, but in some cases the timeframe was 5 years, and in other cases 20 years.

A similar system operated in Kansas City, Missouri, when George E Kessler was appointed in 1892 to develop a system of parks. The park board initially considered financing his comprehensive plan by raising property taxes, but major landowners opposed this. Further, the city's authorized debt ceiling constrained its borrowing pledged with property taxes, since it had used almost all of its capacity on a bond issue to purchase its water works.

The city's alternative solution was to establish "park benefit districts" in which the costs of parks were divided among the lots in a district. Benefit assessments were not debt obligations of the city and did not affect the city's borrowing capacity. In 1895, a referendum of Kansas City residents passed this plan by a ratio of 7 to 1 (Brown & Dorsett, 1978). The legislation authorized the use of eminent domain to create the parks and established a process to expedite it. The approach became known as the "Kansas City Method" (Bucholz, 1917).

The impact was impressive. The attractiveness of the city's park system became famous quickly. For example, in 1910, a New York City publication commented, "The beauty of landscape has appeared in the development of a remarkable system of parks and boulevards that has been established in Kansas City, Missouri, within the last 15 years" (The Outlook, 1910). By the 1920s, the Kansas City parks and boulevard system was widely regarded as the premier park system in the U.S. (Alley & Boley, 2014).

Why the use of Benefit Assessments Declined

Three factors led to decline in the use of benefit assessments. First, defining the boundaries of a special district, and determining how to allocate a park's cost among properties so assessments were proportionate to benefits were challenging and often controversial technical tasks. This was exemplified at Central Park, where the poor quality of the land and its remoteness from the city's population meant that property values were underassessed for taxes, given the future potential of the post-development park values. Thus, many landowners paid considerably less in benefit assessments than their actual gain from the park. This was especially true for those whose lots directly faced the new park along Fifth Avenue. As a result, owners of lots not facing the park paid more than their fair share of benefit assessment. For example, three years after the assessments were levied, "each dollar paid in park-front assessments at 80th Street and Fifth had yielded a two-dollar gain in land value; each dollar in assessments off the park (around the corner on 80th Street had yielded only a fifty-cent gain" (Rosenzweig & Blackmar, 1992, p. 86).

Second, if some neighborhoods were assessed for their parks, then many argued equity required that all neighborhood parks should be funded in this way. However, assessments did not work in all contexts and they resulted in parks being confined to the wealthier areas of the city. Landowners in poorer neighborhoods were unlikely to support the process, since it would be more difficult to recoup the assessments from rents, and the cost of a park was likely to be greater than the resulting increase in land values. Further, in New York it was not atypical for people to purchase long-term leases for say 25 or 50 years on which to build. In these cases, lessees were responsible for paying the benefit assessments, but any long-term gain in the property's value would accrue to the leaseholder.

Third, an additional inequity was the differential ability to absorb benefit assessments. This was recognized at Central Park where small landowners who lived on their land and perhaps operated a family business would struggle to meet the assessment (Rosenzweig & Blackmar, 1991). When the assessments were announced, the *New York Sun* opined: "We fear that many poor men...will look with dread upon the Park assessments, and should they be obliged to sell, they must, in the present state of the real estate market, do so at a ruinous sacrifice. The speculative value which the Park opening may give to lots held by persons able to meet all expenses, will hardly be realized by poor owners force to sell" (*Sun*, Oct 5, 1855). Subsequently, the *Sun* suggested:

One would suppose that the arrangement was intended to compel poor men who may own a lot or two in the vicinity of the Park to sell out for the benefit of speculators and rich men. Was there a deliberate purpose to drive away from the neighborhood of the Park, the class who cannot meet at once these heavy assessments?" (*Sun*, Jan, 12, 1857)

These factors caused Minneapolis to abandon the use of benefit assessments for financing parks in the 1960s, because there was concern they created a two-tier system of parks. The system's superintendent commented: "It totally disenfranchised the folks who couldn't afford parks" (Martin, 1994, p. A16).

Contemporary Adaptations of Special Benefit Assessment Districts

Contemporary forms of this mechanism have re-emerged using a variety of names: enhancement districts, benefit assessment districts, park improvement districts, special service districts, neighborhood or local improvement districts, or business improvement districts. These districts are not political entities; they are simply designated areas in which a local government levies a recurrent additional charge. Most commonly, local governments facilitate their organization when a majority of property owners within the district's boundaries agree to assess themselves an additional property or sales tax to pay for a higher level of service. The tax is apportioned according to a formula reflecting the proportion of benefits accruing to each property owner. Thus, people whose property is located on the fringe of the district may be assessed less than people whose property abuts the park or facility.

Where the higher level of service that taxpayers' desire refers to acquisition and development of new facilities, rather than to higher standards of operation and maintenance, special assessment bonds may be issued to finance the capital improvements. A former commissioner for parks and recreation in New York City observed, "It's like upgrading an airline ticket to first class" (Martin, 1994, p. A6).

Seattle established a Local Improvement District (LID) for a major renovation project on its waterfront estimated to cost \$320 million. The project was comprised of six elements: promenade, overlook wall, Pioneer Square Street improvements, enhanced pedestrian connections, Pike/Pine Streetscape improvements, and Waterfront Park. There were 6,130 individual tax parcels in the district, of which almost 5,000 were high-rise condominium units located in 54 projects. These properties already had prime views of the waterfront, which meant their owners paid higher taxes. However, it was recognized that the improvements would confer additional special benefits on them. Those special benefits were estimated by an independent property valuation consultant. Property abutting the waterfront improvements reflected the highest range of special benefit ranging from 2.5% to 4%. Those on the periphery of the project ranged from 1% to 3%. These premiums were created by enhanced pedestrian connectivity and the new waterfront park amenities.

The city council decided to capture \$160 million of that special benefit (i.e., just under half of the project cost). Over 65% of the assessments on condominiums were less than \$5,000, and 95% were less than \$20,000. This was a one-time assessment, but it could be spread over 20 years with equal monthly payments of principal plus interest, reflecting the interest paid by the city on the LID bonds (Valbridge Property Advisors, 2018).

In some large cities, benefit districts have been initiated by business leaders. Such areas are termed business improvement districts (BIDs). There are more than 1,000 BIDs in the United States and Canada. Bryant Park beside the New York Public Library

was a neglected, vandalized facility that by the late 1970s had become a haven for drug dealers in the city of New York and was widely referred to as “Needle Park.” In less than 15 years it was transformed into an urban treasure that was central to the revitalization of Midtown New York City and especially 42nd street (Ernest & Young, 2003; Lerner & Poole, 1999; Mouat, 1992).

The city paid one-third of the \$18 million restoration costs, and foundations, philanthropists, and surrounding businesses financed the rest through a BID. The BID maintains the eight-acre park and makes ongoing park improvements. The park has been restored with tall shade trees, lush green grass, flower beds, pagodas, and a thriving restaurant, and is now considered a model park. The businesses assess themselves approximately 33% of Bryant Park’s \$2 million annual maintenance bill, while the remainder of the bill is raised in rental and concession fees from restaurants (33%) and special events (33%) held in the park. Businesses recognized that property values and, hence, lease rentals, were closely tied to conditions in the park, and rents in nearby buildings increased dramatically after the park was redesigned and secured (Ernst & Young, 2003).

Implications for Contemporary Adaptations of Excess Condemnation and Benefit Districts

The demise of the excess condemnation model was primarily attributable to the courts’ rulings that condemning private land and subsequently reselling parts of it to other private interests at a profit was not consistent with “public use,” which was the criterion that condemnation had to meet for it to be justified. In a contemporary context, this issue is moot since park land is now invariably acquired through fair market transactions. The principles of the property lease model, the reimbursement clause in parkland dedication ordinances, and tax increment funding for parks are consistent with those embedded in excess condemnation, and all appear to be under-used vehicles for funding new parks in growing cities. Although individual state laws control the extent to which communities can engage in real estate transactions, in many contexts it is likely to be permissible for land to be purchased for a park and some of it sold or leased to capture the premiums created and pay for the facility, although that part of the acquisition may have to be funded with economic development funds rather than park funds.

Nevertheless, there are challenges. There is an aphorism that says, “Those who do not know their history, remain children forever.” Children lack knowledge of history and hence learn empirically by trial and error. In contrast, knowledge of history can be used to inform future actions by identifying what has been effective and ineffective in the past. What lessons can be learned from the historical precedent? These early experiences alert contemporary advocates to two potential challenges.

First, the early experiences with excess condemnation showed that real estate speculation involved risk, but if the strategy failed, the worst-outcome scenario for a community was that the land was integrated into the park. This occurred in part at Prospect Park in Brooklyn and in several of the early bellwether parks in England from which the excess condemnation vehicle drew its inspiration (Crompton, 2020). However, the citizenry was often skeptical of city officials “wheeling and dealing” in private property transactions. The Pew Research Center has been conducting annual

surveys of the public's trust in the federal government since 1958. In that year, almost 75% of Americans trusted the government to do the right thing almost always or most of the time. In the most recent 2019 survey, this had dropped to 17%, which was the lowest on record (Pew Research Center, 2019). This lack of trust makes it more difficult to implement these financing vehicles. However, there is evidence of more trust at the local level (Fallows, 2017), and where this has been earned, the strategy becomes feasible.

Second, historically, private real estate interests were likely to vigorously oppose this strategy, since they sought to privatize these land value gains and capture the premiums for their projects. This opposition is likely to prevail in a contemporary context but elected officials and advocates can counter it by choreographing visible and voluble constituencies who are strong enough to refute the reflexive charges of "socialism" that will inevitably be forthcoming from the development community.

Three factors that led to the historical demise of benefit districts and assessments remain challenges in contemporary society, but all are surmountable. The first challenge is allocating a park's cost among properties so assessments are proportionate to benefits. The difficulties were evident in paying for the 20-acre Seattle waterfront park project. An assessment could not exceed the value of the special benefit from the park accruing to each of the 6,000 properties in the benefit district. Calculation of the gain required establishing the increase in value for each property by estimating the difference before and after the waterfront project was completed. If owners representing 60% of the assessed value submit a written protest, the city could not form the LID. In arguments reminiscent of those at Central and Prospect Parks, many homeowners objected to paying a special assessment for a park that would benefit the city as a whole or that may have a negative impact on their property from increased traffic and congestion (DeLappe, 2018). Despite these challenges, the benefit assessments were enacted.

Second, arbitrarily using assessments on some parks and not others caused public support for benefit districts to decline. Until relatively recently, there was no empirical evidence that different types of parks had a differing influence on the value of proximate lands. However, such evidence is now available and it removes much of the arbitrariness. For example, premiums for passive parks are likely to be much higher than for active parks; some parks can have a negative impact on adjacent values because of nuisances such as congestion, street parking, litter and vandalism, deviant behavior, noise and ballfield lights; size matters, the larger the park the greater the value added; almost all value added is likely to accrue to properties within 500 feet; and so on (Crompton & Nicholls, 2019).

Third, as the Minneapolis decision to abandon the Elwood formula illustrated, the use of benefit districts disproportionately disadvantaged lower income residents. In some instances, it resulted in gentrification, because as property values rose it became more difficult for lower income residents to afford to live in an area. The natural economic forces that are likely to drive gentrification can be mitigated if local governments are proactive in establishing such vehicles as inclusionary zoning, creating a housing trust fund, and working with nonprofits and community development corporations to create affordable mixed-use developments.

Conclusion

The factors that historically led to the demise in the use of excess condemnation and benefit districts can be surmounted in some contemporary contexts. Implementation examples of the vehicles described in this paper illustrate their potential. The tax revolt of the late 1970s and 1980s radically and enduringly changed the political climate. Most elected officials are under relentless pressure from their constituents to lower, or at least not raise, taxes. At the same time, local governments are continually being required to take on many more responsibilities as state and federal levels of government reduce the level of funding they traditionally provided. In this climate, the vehicles discussed herein which do not rely on general tax funds are likely to be appealing options for financing the capital costs associated with the development of parks.

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