PRESIDENT'S MESSAGE GEORGE W. McCARTHY

What We Didn't Know Then

IN MY OCTOBER MESSAGE, I ruminated on the classic lyric by Bob Seger: "Wish I didn't know now what I didn't know then." The lyric provides an invitation to reflect on lost innocence. Though that column was written not long ago, it already feels like the product of a different era. The coronavirus pandemic has rapidly changed the ways we conduct our public and private lives. I'm certain we will learn many lessons from this experience, in and well beyond the realm of land use. Some of the responses to my last column might even prove instructive. In that column, I invited readers to share their own "lessons learned," and got several interesting responses. I'll reflect on a couple of them here, and I hope this will spur more of you to engage with us as we launch a new Letters section with this issue.

Our colleagues at the Babbitt Center for Land and Water Policy weighed in with this reflection: We wish we didn't know now that the apportionment of Colorado River water in the 1920s relied on an unusually wet period at the beginning of the 20th century as a baseline. The commission that divided water rights assumed that the river supplied 17.4 million acre-feet (MAF) of water annually. They allocated 15 MAF in equal parts to the U.S. states in the Upper and Lower Basins and 1.5 MAF to Mexico. The actual annual flow of the river varies from less than 5 MAF during droughts to 22 MAF in wet years. A more reasonable estimate for average annual flow is between 12 and 13 MAF.

Aware of the structural challenges created by the allocation and the variability of water flow, the river commissioners devised ways to store water by building dams and reservoirs. But they could not have foreseen the factors now affecting water supply in the West, from population growth to climate change.

Some 40 million people depend directly on the Colorado for drinking water and tens of millions of others depend on the food produced using its water for irrigation. From 2000 to 2019, the river had its lowest flow over a 20-year period since the Glen Canyon Dam was completed in 1963. At the beginning of this year, water storage in the system was at 53 percent of capacity, a welcome increase over 2019 when it was at 47 percent of capacity. The system is surviving, but barely, and communities throughout the basin are finding new ways to reduce demand in the face of reduced supply. It's a productive but painful exercise, one that might have been avoidable had a bit more humility and precaution been in play from the start.

What lesson can we draw from this? Since science is always improving, it might have been wise for the commission to enact an adaptive policy. This would have left room to revisit and revise allocations when more was known about the river's hydrology. However, as noted by river historian and Justice Greg Hobbs: "the Commission fended off a suggestion of the U.S. Geologic Survey that the [agreement] should last only 50 years and then be renegotiated. Instead, the Commission produced a perpetual allocation between the upper basin states and the lower basin states." Perhaps humility was off the table.

A very different, but no less painful, example arrived from our partners in New York, who wish they didn't know now that when the city considered rezoning the neighborhood around the Gowanus Canal in Brooklyn, speculators would lay claim to potential future land values—to the tune of billions of dollars—almost immediately.

This neighborhood, built around a mostly abandoned industrial canal, is one of the last affordable places in Brooklyn. It is well-located—next to Park Slope and close to Prospect Park—and well-served by transit. It remained affordable because the canal was badly polluted with industrial waste over many decades. The Environmental Protection Agency (EPA) put the canal on its Superfund National Priorities List in 2010, formalizing a cleanup plan in 2013.

The city is only now preparing to release its proposed zoning plan for public review. So how could speculators capture so much of the future publicly created additions to land value? For one reason, they've known for over a decade that the area would likely be rezoned; the New York City Department of City Planning invited public comment on a rezoning study in 2008. And once the area became a Superfund national priority, the race was on to buy up everything available.

In the face of this spree, residents became concerned. A coalition of housing and community development advocates organized to defend the neighborhood. They asked the Lincoln Institute for help understanding whether rezoning might gentrify the neighborhood by increasing land and property values and displace current residents. We recommended a firm that could analyze historical and potential future property values.

That firm looked at 798 land properties designated for rezoning. Based on very conservative assumptions, they estimated that the land value of those parcels increased by $2.1 billion to $2.4 billion between 2013 and 2018. They then looked at the 387 parcels that were most likely to be redeveloped after rezoning and estimated that their land values would increase another $1 billion to $1.7 billion. The total increase in the land value created by rezoning the Gowanus was $3 billion to $4 billion, but almost two-thirds of it was captured by landowners by 2018, *before any rezoning had been put into effect*.

In New York, development rights are traded and transferred in a billion-dollar private market. This allows developers to build beyond current zoning limits by buying unused building rights from nearby landowners. Purportedly, JPMorgan Chase paid $200 million to purchase the right to add 18 floors to its headquarters on 270 Park Avenue, which was built to its zoning limits. Oddly, the public sector doesn't participate directly in these markets; if it did, the city could have sold the new development rights it created in the Gowanus for upwards of $3 billion. This increased land value was the product of public action—rezoning and investment in the cleanup—and should not have ended up in the pockets of landowners or developers.

In the case of places like the Gowanus, we need to stop making windfalls available to landowners and developers and find ways to recover the land value created by public action—whether through direct investment or policy change. And we need to recognize that timing is important. Speculators will act in a nanosecond to manifest a value proposition. The public sector needs to be ready with policies and procedures to claim what is rightfully its own before the speculators show up.

We all know it's easy to engage in Monday-morning quarterbacking. Neither you nor I faced the monumental task of dividing up the Colorado River, or cleaning up and rezoning that New York neighborhood, or deciding whether to shut down an entire state or country to protect public health. What I do know is that more humble and adaptive policy approaches better prepare us for the unknown, and more proactive approaches will build more resilient communities. By embracing these tools, we can move forward more confidently, minimizing the regret, lost value, and missed opportunities that too often linger for decades after significant policy decisions are made.