

# HOUSES OF THE OIREACHTAS

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## AN COMHCHOISTE FIOSRÚCHÁIN I DTAOBH NA GÉARCHÉIME BAINCÉI- REACHTA

### JOINT COMMITTEE OF INQUIRY INTO THE BANKING CRISIS

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*Déardaoin, 12 Márta 2015*

*Thursday, 12 March 2015*

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The Committee met at 9.30 a.m.

#### MEMBERS PRESENT:

Deputy Pearse Doherty,	Senator Sean D. Barrett,
Deputy Joe Higgins,	Senator Michael D'Arcy,
Deputy Michael McGrath,	Senator Marc MacSharry,
Deputy Eoghan Murphy,	Senator Susan O'Keeffe.
Deputy Kieran O'Donnell,	
Deputy John Paul Phelan,	

DEPUTY CIARÁN LYNCH IN THE CHAIR.

## CONTEXT PHASE

**Dr. Elaine Byrne:** About two weeks ago. I think that referred to Professor Bill Black's comments, as well as other comments that have been made before the inquiry, that it is not just about looking at the institutions but at the individuals within those institutions. In that article I made reference to legislation and to Judge Rakoff's comments. He is a pretty amazing individual when it comes to economic crime and his comments about wilful neglect. Just because an individual does not know, one also should ask, "Well, should they have known?" There is a responsibility therein. One cannot just hide behind this veil of "I didn't know." The question then arises that one should have known and there is liability therein.

The other piece in that article I referred to was in relation to Europe and penalties that the UK is also trying to bring in on not just fining banks, but fining individual bankers. There has been research done that since 2008 extraordinary fines have been imposed on banking institutions around the world, but behaviour has not changed.

The governor of the Bank of England, who also happens to be an Irish passport holder, has argued very vehemently, "What has changed?" We have had an economic collapse. We have had institutions that have collapsed. We have had massive consequences to individual citizens, but the behaviour of some of these banks has not changed because it is almost like banks are using fines as a line within their accounts. There is an inevitability about it, "We're going to get fined and, sure, that's part of life." So instead of focusing just on the institutions one would also focus on the individuals.

**Chairman:** Is there anything Dr. Byrne would like to add by way of concluding comments?

**Dr. Elaine Byrne:** I thank the Chairman for the invitation.

**Chairman:** I thank Dr. Byrne for attending. I thank her for her participation. Today has been very informative. We have had a valuable meeting which has added to our understanding of the factors leading to the banking crisis in Ireland.

*Sitting suspended at 11.46 a.m. and resumed at 12.10 p.m.*

## Mr. Frank McDonald

**Chairman:** In session No. 2 we will have a discussion with Mr. Frank McDonald. We are focusing on the theme of relationships between State authorities, political parties, elected representatives, supervisory authorities, banking institutions and the property sector. I welcome Mr. McDonald, a former journalist with *The Irish Times*. He commenced his journalistic career as a freelance New York correspondent for the *Irish Press*, subsequently becoming a sub-editor and reporter for the paper. He joined *The Irish Times* in 1979. He was the environment correspondent from 1985 to 2000 and environment editor until his official retirement in January of this year. Mr. McDonald is also author of several books, including *The Destruction of Dublin*, *Saving the City* and *The Construction of Dublin*. He is joint author with Peigin Doyle of *Ireland's Earthen Houses* and with James Nix of *Chaos at the Crossroads*, published in 2005, which documented the environmental destruction of Ireland during the boom years. He is joint author with Kathy Sheridan of *The Builders*, which profiles the developers and others in the Celtic tiger period.

In recognition of his work, Frank was conferred with an honorary doctorate by Dublin Institute of Technology in 2006. He was made an honorary member of the Royal Institute of Ar-

chitects of Ireland of 2010 and an honorary fellow of the Royal Institute of British Architects in 2011 and an honorary life member of the National Union of Journalists in 2014. Mr. McDonald is very welcome to the inquiry this morning.

I advise the witness that, by virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to this committee. If they are directed by the committee to cease giving evidence on a particular matter and they continue to do so, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given. The witness is asked to refrain from discussing named individuals in this phase of the inquiry. Members are reminded of the long-standing ruling of the Chair to the effect that they should not comment on, criticise or make charges against a person outside the Houses or any official by name or in such a way as to make him or her identifiable.

I invite Mr. McDonald to make his opening comments to the inquiry.

**Mr. Frank McDonald:** It is fair to say that the close relationship between the construction sector in this country, including property developers, and the world of politics, is well-established not only in Ireland but throughout the world. It is not an unusual phenomenon. The Galway tent, notorious in its own way, was our version of it until recently. Back in the 1960s, the nexus of connection between the construction sector and politicians became evident with the formation of Taca, a Fianna Fáil fund-raising organisation which used to run £100-a-plate dinners to raise money for the party and which were pretty scandalous at the time. It is known that there were close connections between leading property developers and senior politicians, as the latter could facilitate the former in securing State tenants for planned office buildings, particularly in Dublin, to cater for our growing Civil Service.

Politicians at local level also played a crucial role in facilitating ambitious plans. Since the 1963 Planning Act came into force in October 1964, it has been a “reserved function” of councillors to make decisions on the content of city or county or indeed, town development plans. What this meant was that they were in charge of zoning land -- making decisions about which land would be designated for development and which land would not be so designated. They had the power, in other words, to transform the value of agricultural land anywhere in Ireland, multiplying it by a factor of ten or more. So there was a lot riding on such decisions.

Between 1963 and 1971, land values in the Dublin area soared by 530% as the scale of the development opportunities became evident and speculators scrambled to buy up land likely to be rezoned for housing, industry or whatever. The then Fianna Fáil Government established a committee on the price of building land, chaired by a renowned constitutional lawyer, Mr. Justice John Kenny, to recommend ways of curbing such speculation. It proposed that all land required for development should be designated and then acquired at its existing use value, plus a premium of 25%. Sadly, over the past 40 years, however, nothing was done to implement this recommendation by any Government in the entire period.

It was inevitable under these circumstances that land speculation would continue and that zoning would become tainted by corruption. Allegations that “brown envelopes” were changing hands, first surfaced in 1974, but a Garda investigation got nowhere. Subsequent Garda investigations in the late 1980s and again in 1993 also got nowhere. The latter investigation, the 1993 investigation, incidentally, arose out of a week-long series of articles in *The Irish Times* written by Mark Brennock and myself, on suspicious land rezoning decisions in County Dublin. It led off with a news story on the front page, headed, “Cash in brown paper bags for council-

lors". An advertisement placed by a firm of Newry solicitors offering a €10,000 reward on behalf of then anonymous clients for information that would secure the conviction of persons for engaging in land rezoning corruption ultimately led to the establishment of the planning tribunal, chaired first by Judge Feargus Flood and later by Judge Alan Mahon. The tribunal heard voluminous evidence from witnesses with first-hand experience of corrupt payments and drew a number of conclusions in this regard that were later deemed technically unsound following a Supreme Court ruling. However, I have no doubt personally that corruption lay at the heart of Dublin County Council's most contentious land rezoning decisions.

One has to remember that the planning tribunal was dealing only with County Dublin as it then was. I have no doubt that there has been corruption elsewhere; otherwise, decisions made by elected representatives against the advice of planning officials are almost inexplicable. After all, we have a political system that is based on clientilism - as the members of this committee know very well. I would define clientilism as doing individual favours for individual constituents, in effect, turning citizens into clients. How much more of a step is it really to seek "political donations" in return for performing such "services" as rezoning such-and-such a parcel of land rather than such-and-such another parcel of land? I would suggest that there is not much of a step between those two things.

Local area plans that were intended to give people more control over what happened in their own areas were turned instead into vehicles for land speculation and the enhancement of land values. This applied right across the board. Laois, Monaghan, Westmeath and Wexford were among the counties that fell victim to this trend. However, every council in Leinster, it seemed, wanted to secure a slice of Dublin's development. There was massive over-zoning of land during the boom period. In some cases, so much land was being zoned under county and local area plans that it could cater for decades of housing development. In one case, enough land had been zoned in a particular county plan that would have catered for housing demand up until the year 2070. Every county was making these decisions in disregard for what other counties were doing, or not doing, as the case may be. Pressures from farmers and other landowners to have their patches of land zoned for development reached fever pitch in 2007, as the property bubble inflated to its full overblown size. It was little short of a frenzy, as I recall. There was a sense of "It's now or never" in the air, and some feared that they had already missed the boat or, rather in this case, the hot-air balloon.

Pumping up this balloon for most of the period under review was an array of lucrative tax incentives. There was the long-established section 23 incentive for buy-to-let apartments or houses, and other tax breaks for the development of run-down seaside resorts - a measure introduced by the rainbow coalition in 1996 - hotels, multi-storey car parks, student housing and a specific area-based tax incentive scheme called the upper Shannon rural renewal scheme, which applied to all of counties Leitrim and Longford as well as parts of Cavan, Roscommon and Sligo. In theory, nearly anything developed anywhere within this vast designated area would qualify for tax incentives under the scheme introduced in 1998 by then Finance Minister, Charlie McCreevy. It is hardly surprising then that among the counties severely hit by the phenomenon of ghost estates were Leitrim and Longford, because not only was there massive over-zoning, there was also massive over-development. *Laissez-faire* planning policies, largely landowner or developer-driven, created the framework for it all to happen while the advent of motorways facilitated and encouraged the sprawl of Dublin and other urban centres by leading people to imagine that they could live up to 100 km from where they worked and get there and back by car. In Gorey, County Wexford, for example, more than 70% of new residents were commuting to work in Dublin, nearly 90 km to the north. The same was happening all

over Leinster and even in parts of Ulster. I would instance Virginia, County Cavan, or Carrickmacross in County Monaghan, which have suburban housing estates that are really part of Dublin, in effect. Yet, the strategic planning guidelines for the greater Dublin area, which were adopted in 1999, had stressed the importance of consolidating the metropolitan area. In other words, the guidelines were anti-sprawl. Although if the guidelines were to mean anything they would have to be enforced, incredibly, no effort was made to do this either by local or central Government. If the suburbs of Dublin were springing up in such unlikely places as Rochfortbridge in County Westmeath, which is 80 km from the capital, it was attributed to market forces and people would come to their senses when houses lost their value, which has happened.

The Government even used escalating house prices in Dublin to promote its controversial decentralisation programme, noting that public servants with homes in the capital would do well on selling them and buying a much cheaper house in one of the 53 locations to which more than 10,000 of them were to be dispersed. The other beneficiaries were the business communities in the towns where new Government office blocks were to be built, including estate agents, shopkeepers, publicans, providers of other local services and those who had sites for sale. It was the same with property-based tax incentives. As more investors availed of these incentives, a whole sector of society had a major vested interest in ensuring the incentives continued for as long as possible.

The banking inquiry committee needs to ask why the property-based tax incentives were continued for so long even though the construction industry was having its biggest, most profitable spree ever. Although it was perfectly justified to introduce the section 23 tax incentive in the late 1980s when the construction industry was on its knees and desperately needed a lift, to persist with these incentives when the construction industry was leading the boom was the height of folly. The Government was adding fuel to the fire, stoking an already hot furnace. The committee needs to ask former Ministers for Finance of the period precisely why they decided that a range of property-based tax incentives should remain in place, given that no public interest reason can be offered to justify such an irrational fiscal policy.

The availability of lucrative tax incentives combined with cheap credit and *laissez-faire* practices in the banking and planning sectors created and sustained the property bubble. Bankers also played the role of touts for developers. Frequently, it was bankers who spotted development opportunities at well located sites and lined up client developers to run with them, with the bank providing the loan financing. Thus, developers ended up “leveraged up to their eyeballs” as one observer put it. The banks were counting on these developers as men with the Midas touch to repeat their previous performances again and again as more sites came onto the market, even with eye-watering price tags.

So many of us were caught up in the bubble that we could not see it in perspective or at all. It became normal that a fairly average semi-detached house could be worth €1 million or more and that the price per square metre of residential accommodation was higher in Dublin than it was in Paris. Every day, banks sought to persuade us to take out loans for new cars, holidays, home improvements, houses or whatever, and many of us did in droves. That is why economist Professor Morgan Kelly’s warning of an imminent collapse in the property market, published by *The Irish Times* in December 2006, was regarded by many as being as heretical as Martin Luther nailing his theses to the great west door of the Wittenberg cathedral.

**Chairman:** I thank Mr. MacDonald for his opening statement. He referred to the reserve function of councillors to make decisions on development plans regarding cities and counties, and that it involved the rezoning of land including agricultural land where the values could in-

crease by factors of ten or more. Does this system exist in any other European planning system outside the Irish jurisdiction?

**Mr. Frank McDonald:** In Britain, decisions on individual planning applications are made by members of the planning committee of a council, not by the officials. Decisions are made on the recommendations of planning officials who adjudicate on particular applications, after which members of the planning committee vote on whether to grant permission, development control of the function of the council as well as the zoning of land. It is not unusual for councils to be responsible for the zoning of land, and I have no problem with it. My problem is that many of those decisions were taken at the behest of developers, landowners or speculators who were in business at the time. The former chairman of An Bord Pleanála, Mr. John O'Connor, who subsequently went on to chair the Pyrites Resolution Board, drew attention to it at the end of his term of office saying:

By law, development should be led by democratic plans but during the boom period developers and vested interests had undue influence on plan making. Developers had little regard for statutory development plans in buying land and designing schemes. Banks ignored planning parameters in lending, local authorities failed to vindicate their own development plans and An Bord Pleanála has had to refuse or amend many poor quality development plans on appeal. Land values were subverted as well.

He went on to say that councillors and management succumbed to development pressures. The notion was that everywhere should be developed. Local authorities failed to send the right signals to developers. There were conflicts between management and planners within local authorities, minimal involvement in planning decisions by local authority architects and An Bord Pleanála's decisions frequently went unheeded by developers. I would be more than willing to provide a copy of this to the members.

**Chairman:** In Mr. McDonald's opening statement, he referred to situations in which the value of agricultural land multiplied by ten times or more after it was rezoned for residential, retail or commercial purposes. In those situations there may be secondary incomes or benefits to the State through stamp duty, rates and development levies. Does the State accrue any immediate income as a result of the increase in land value as soon as the development plan is put in place?

**Mr. Frank McDonald:** The local authorities accrued income through development levies.

**Chairman:** If the value of an acre of land increases from €1,000 to €10,000, does the State get any benefit?

**Mr. Frank McDonald:** No. The issue of capital gains tax, CGT, would probably have arisen in some cases. There was also a special level of CGT, which has since been abolished, for windfall gains from the sale of land.

**Chairman:** Does a similar situation apply in another European jurisdictions?

**Mr. Frank McDonald:** No. In general, land that is required for development is zoned for it. For example, if one had a plan for a new town, one would zone the land required for the new town, having considered all the factors involved. The entire area would be designated for development and compulsorily acquired by the local authority. A master plan would be done for the entire development, and then the land would be parcelled up and made available for development.

**Chairman:** Is the Irish system unique?

**Mr. Frank McDonald:** While I am not sure I would say it is unique, it is way behind what normally happens elsewhere. The whole business of designating land for the development of new towns is more or less along the lines of what Judge Kenny suggested in his report, namely, agricultural value plus a premium of 25%.

**Chairman:** Just one other matter relating to that. Towards the conclusion of your opening statement, you say: “Bankers also played a role of touts for developers. Frequently, it was the banks who spotted the potential of a well-located site and will then line up one of their client developers to run with it.” That is on page 3. In general macro terms, not specific situations, how prominent was this approach to property development in the banking market, by your reckoning?

**Mr. Frank McDonald:** I think it was pretty widespread. I think that banks and developers were working hand in glove in seeking out sites for development. A lot of the stuff one hears is apocryphal, of meetings between fellows playing golf and all the rest of it, saying: “Oh God, I saw that site in such and such a place. It’s up for sale. Maybe you should go and buy it.” They would say that to one of their developer clients and that was quite common. Frequently, it would be the developers who would spot the potential of a site, but frequently, because the banks became so involved in property development and lending funds for that, they had a brace of clients. Each bank had a series of major developer clients. Without naming any particular bank, I think it is very well known that this was the case.

**Chairman:** Thank you. I call Deputy Michael McGrath.

**Deputy Michael McGrath:** Thank you, Chairman. Mr. McDonald is very welcome and I thank him for coming in to us. May I start by asking him about the Kenny report of 1974, which was the committee on the price of building land? Mr. McDonald refers to it in his book, *The Builders*, co-authored with Kathy Sheridan. Can he advise the committee what the central recommendation of the Kenny report was, and what impact does he believe it would have had if it were implemented?

**Mr. Frank McDonald:** The central recommendation was pretty clear - it was that land that was required for development in this country should be capable of being acquired at its agricultural value plus a premium of about 25%. In other words, the speculative element of zoning would have been practically eliminated if that was the case.

**Deputy Michael McGrath:** By the local authority?

**Mr. Frank McDonald:** Yes.

**Deputy Michael McGrath:** Okay.

**Mr. Frank McDonald:** The land would have been acquired by the local authority and then presumably a master plan would have been done, as would happen in Britain and other places as well. It would have eliminated the massive increase in value that took place as a result of an unregulated situation.

**Deputy Michael McGrath:** Would the local authority have commissioned builders to build on the land or would the council have sold the land?

**Mr. Frank McDonald:** The local authority would not necessarily have held the land in its

## CONTEXT PHASE

own ownership, but would - on the basis of a master-plan, with industry here, housing there and shopping here - decide where everything was going to go. It would then parcel up the land and sell it off, or at least make it available to developers to develop. It would have been a much more rational and straightforward way to do it, instead of having a situation where everybody was champing at the bit, looking for their particular parcel to be rezoned because on rezoning the land would then be worth ten times as much as it was before that.

**Deputy Michael McGrath:** Is the key thing there that the land would have been rezoned first, before it is brought to the market-----

**Mr. Frank McDonald:** Yes, absolutely.

**Deputy Michael McGrath:** -----rather than buying land speculatively and then trying to get it rezoned?

**Mr. Frank McDonald:** Yes, and personally I do not understand. I know the final Kenny report had a minority report which expressed some concern that this might be unconstitutional. Let us not forget, however, that the late Judge Kenny was one of the foremost constitutional lawyers in Ireland. I cannot understand why successive Governments, of every political hue - I am not blaming any party in particular for this - never ran with that. They never understood the fundamental importance of having a rational system for the development of our towns, cities and elsewhere.

**Deputy Michael McGrath:** In his opening remarks, Mr. McDonald said he had no doubt that there has been corruption elsewhere outside of County Dublin which was examined in the tribunal, otherwise decisions made by elected representatives, against the advice of planning officials, are inexplicable. There is an inference there that where councillors go against the advice of planners there is at least the possibility of corruption being involved. Can Mr. McDonald elaborate on what he means by that, and how widespread he believes that practice was?

**Mr. Frank McDonald:** I think it goes back to the point I made about the clientelist political system that we have. I want to make it clear that I am not saying every decision made by local authorities and by elected members over the period was corrupt, or anything like it. I am saying, however, that the possibility of corruption certainly existed and I have no doubt that it did occur. There have been cases to do with this in the courts, without naming any names.

**Deputy Michael McGrath:** I would put the point to Mr. McDonald that professional planners are not infallible gods either.

**Mr. Frank McDonald:** Absolutely not.

**Deputy Michael McGrath:** They can make mistakes.

**Mr. Frank McDonald:** Yes, of course.

**Deputy Michael McGrath:** Very often they may have their own personal agenda or personal vision and can be quite dogged about its implementation. That can seem quite inexplicable at times. Does Mr. McDonald accept that in the interests of proper planning and development, there are many occasions where elected members are right to overrule the professional planners?

**Mr. Frank McDonald:** I have no doubt that that is also the case, and that has happened. I used to sit in the small press gallery next to the small public gallery in the former Dublin County



Council chamber in O'Connell Street. I witnessed a lot of the decisions that were being made and there is no doubt in my mind that there was corruption involved. I saw that very early on and I was appalled by it, to be honest. I have not sat in at very many other local authorities around the country, but I do know about some of the decisions that were being made. Without going into details, these decisions were completely irrational from a planning point of view.

**Deputy Michael McGrath:** Is this about the zoning of land?

**Mr. Frank McDonald:** The zoning of land. Some of the zoning decisions that were made were completely irrational. There is no doubt about that. There was no justification for them whatsoever. It was happening all over the place.

**Deputy Michael McGrath:** Mr. McDonald believes therefore that that practice was quite widespread and that the decisions to zone land were, on many occasions, influenced by such payments. Is that his claim?

**Mr. Frank McDonald:** Let us put it this way - I agree with the former chairman of An Bord Pleanála, John O'Connor, that far too much of what went on was developer-led, rather than planning-led. That is the crucial difference that one would have to draw - that development plans were being made at the behest of developers, rather than on the basis of rational planning and what was good for the area or good for the country.

**Deputy Michael McGrath:** Would Mr. McDonald care to put a percentage on, for example, the zoning decisions he believes may have been tainted by corrupt payments?

**Mr. Frank McDonald:** I could not hazard a guess on that. I am sorry, Deputy.

**Deputy Michael McGrath:** Is Mr. McDonald saying it was widespread or common?

**Mr. Frank McDonald:** I am saying the decisions that were being made were so irrational that it seems to me that there was no other explanation, in some cases anyway, except that there was corruption involved.

**Deputy Michael McGrath:** Does Mr. McDonald believe that the vast majority of elected councillors were and are honest, and are acting in good faith and in the public interest?

**Mr. Frank McDonald:** I would say in general they would. I think that what happened during the boom period was particularly difficult for councillors, however, because of the frenzy element involved in it on the part of landowners, particularly towards the end of the boom. Before it became clear that it was the end of the boom, if the Deputy gets my drift, landowners in other parts of Leinster, far outside Dublin, were frantic to have their land rezoned. Where local area plans were being done for villages in Laois, Monaghan or wherever, this was happening on a widespread basis. Decisions were being made that were totally irrational from a planning point of view, but which satisfied the urge of the landowners in question to make a huge killing on the sale of land for its speculative value as development land.

**Deputy Michael McGrath:** Mr. McDonald made the point in his statement that this was, in a sense, inevitable because of the way decisions were made. In that context, has anything changed?

**Mr. Frank McDonald:** Things have changed. The amended planning Act introduced in 2010 essentially required local authorities to justify their planning decisions. In other words, they had to show cause why particular pieces of land were being zoned and not other pieces of

land or whatever. More control was introduced by the legislation over of the excessive zoning of land that took place in the past. In other words, zoning had to be driven by need rather than the wish of particular landowners to make a profit, or a killing.

**Deputy Michael McGrath:** The zoning of land is absolutely vital but the second element is the granting of planning permission. Does Mr. McDonald have any comment to make on the extent of cases where planners would have been overruled by their own management, for example, on cases where An Bord Pleanála would have reversed the decisions of the planners of local authorities and on cases where An Bord Pleanála would have decided against its own inspector's report where the inspector would have viewed the site but would have been overruled by the board which could not have had such an intimate knowledge? Would Mr. McDonald care to comment on those practices?

**Mr. Frank McDonald:** All of that happened on a pretty widespread basis. An Bord Pleanála acted, in many ways, as a last line of defence against excessive zoning and I would say, in some cases, crazy planning proposals. I am talking about skyscrapers, 37 storey towers in Ballsbridge and all the rest of it. An Bord Pleanála did not go for that and did not see that those decisions were justified. In some cases, the board would overrule the report of an inspector. That happens but, in most cases, the board at least attempts to justify why it is making a decision which was not particularly recommended by the planning inspector who dealt with the case. I suppose one could not expect that the planning inspectors would, in effect, have a monopoly on wisdom either. The board could take a more considered view or might give more weight to particular Government policies, with national policy overriding whatever reservations one might have about a particular scheme in that if it complied with national policy, the board would be inclined to grant permission for it. I am thinking of wind farms, for example, which might be very unpopular locally but the board would say that, on balance, because of national policy to encourage renewable energy, it should grant planning permission for the wind farm.

**Deputy Michael McGrath:** I would like to ask Mr. McDonald about the issue of pre-planning consultations between builders-developers and planners in local authorities. He referred to this on page 6 of his book. Does Mr. McDonald believe there was, and is, adequate disclosure of the engagement between planners and prospective applicants, for example? Does he believe there were occasions when the nod was given, essentially in private, to prospective applicants to submit an application for major developments, for example, high-density developments which were higher than might otherwise have been envisaged?

**Mr. Frank McDonald:** Yes. There is absolutely no doubt that was happening, and again on a fairly widespread basis. It is something that should not have happened, but it happened a lot.

**Deputy Michael McGrath:** In the preface to his book on page 15, Mr. McDonald comments that the Financial Regulator appears to have been asleep at the wheel. I know this is not his area of expertise but he made the observation. Does Mr. McDonald want to expand on that?

**Mr. Frank McDonald:** My impression during the period was that no effective controls were being exercised in relation to the lending of money. In the Ireland in which I grew up, the maximum a bank would have lent one would have been two and half times one's salary or whatever. That was very much an issue of prudence. The banks were being prudent by not over-lending to people. In France, for example, it is against the law to lend people more money than they can afford to repay. That is one of the reasons the French banks did not collapse in the way ours nearly did, without the injection of massive sums of money by the State.

**Deputy Michael McGrath:** On the issue of property-based tax incentives, which Mr. McDonald highlighted in his statement, will he clarify the incentives he believes the committee should be exploring? He names a number of them, including the section 23 hotels, seaside resorts, multi-storey car parks, student housing and Shannon rural renewal schemes. Will he give us his view as to exactly what the committee should be examining? He acknowledges that the introduction of such reliefs can be justified at times but he certainly indicates that they may have been retained for too long. Can he elaborate on what he believes the committee could usefully do in that area and how it links in with the overall property and banking nexus?

**Mr. Frank McDonald:** I have never heard a rational explanation for why the property-based tax incentives continued for so long and I would like to hear former Ministers for Finance, of whom there were several during the period, justify, in their own terms, why these incentives continued for so long. My personal belief, as I said in my statement, is that there was such a large constituency of people who benefited from the tax incentives that, in itself, led to a lot of lobbying. Whenever there was a danger that the incentives would be phased out, there was heavy pressure brought to bear on the Government by the construction industry to continue the incentives for as long as possible and to roll them over. There were multimillionaires in this country who were property investors and who ended up paying hardly any tax at all because they were availing of so many incentives, including section 23, multi-storey car parks, hotels, student housing and so on. I think they had the ear of Government. That is my impression. The construction industry realised the boomtime could only be sustained if the tax incentives were sustained because otherwise, how could people have thought it was good value to buy a two bedroom flat for €450,000 if it was not for the fact that they were able to write all of that off against their tax liability? That is what made the difference in terms of the viability of a particular investment.

**Deputy John Paul Phelan:** I welcome Mr. McDonald. Following on from questions Deputy McGrath asked in relation to the tax reliefs, Mr. McDonald stated in his opening statement that section 23 was justifiably introduced at the end of the 1980s. In his view, were any of the other reliefs justifiably introduced at the start? He pointed out, as did other witnesses, that they were extended for too long but were any of the other reliefs justifiable in terms of their initial introduction?

**Mr. Frank McDonald:** I am not sure they were. I would have to be really convinced about that. I do not believe they were. I am thinking, for example, of the seaside resorts tax incentive scheme. What happened was that vast townlands became designated areas. The area around Courtown in County Wexford, for example, which included Riverchapel and a vast area, was designated and anything built in that area qualified for the tax incentives, in particular holiday homes.

The real problem with the scheme was that if the aim was to rejuvenate rundown seaside resorts like Enniscrone, Lahinch or Courtown then the incentives should have been restricted to things such as all-weather playing facilities, swimming pools or other such major elements that would have added value to those places. However, once housing was included as a qualifying category it then ate up the vast bulk of the tax incentives available. Something like 85% of all the investment leveraged by that tax incentive scheme consisted of houses. In effect, those houses were three quarter scale. The great trick of that tax incentive scheme was to persuade people who lived in semi-detached houses in the suburbs to spend their holidays in semi-detached houses, of a lesser scale, in one of the designated areas. I do not think it was justified to that extent. If housing had not been included as a qualifying category the scheme might have

been very beneficial.

**Deputy John Paul Phelan:** Mr. McDonald made a point on lending levels in France and other countries. Does the witness think the thresholds announced recently by the Central Bank, on levels of deposits required by people purchasing property, would have been useful had they existed prior to the financial collapse?

**Mr. Frank McDonald:** Of course. If people had not got a direct line in unlimited credit then we would not have had a property bubble. It stands to reason.

**Deputy John Paul Phelan:** That is fair enough, Mr. McDonald is not the first witness to express that view. Does he believe the funding mechanism which existed for local government prior to the collapse had an impact on some of the zoning decisions mentioned in his earlier evidence, and an impact on the subsequent collapse? Does the witness have a view as to how local government might be funded properly?

**Mr. Frank McDonald:** I never agreed with the idea of abolishing domestic rates. I believe that was a fatally flawed decision which had the effect, from 1978 onwards, of undermining what little authority the local authorities had. That is still the case today. An alternative method of funding from the road tax was unsatisfactory. We now have the local property tax but it is different in that it is collected by the Revenue Commissioners rather than by local authorities. I have always believed in the old saying, "There can be no taxation without representation" and the reverse of that is also true - there can be no representation without taxation. Local authorities should have tax powers. They do not have that. Revenue is collecting the money from the local property tax, so the direct relationship which should exist between the citizen and his or her local authority is undermined by Revenue's involvement.

**Deputy John Paul Phelan:** In his statement and in much of his writing the witness focuses on the relationship between developers, builders, government, politicians and decisions which were made. Does he believe a wider constituency of people and professions outside, including the media itself, were willing participants or beneficiaries of the explosion in house prices prior to the collapse?

**Mr. Frank McDonald:** Is the Deputy talking about property supplements?

**Deputy John Paul Phelan:** Partly, but I am just asking the witness for his own view.

**Mr. Frank McDonald:** It is true that the media, including *The Irish Times*, benefitted enormously from property advertising during the boom period. The media were leaving themselves open to the accusation they were cheerleaders for the property bubble, not least because of revenue they were earning from it. In defence of *The Irish Times*, I would point out that it not only published Morgan Kelly's Cassandra-like article in December 2006, but it also drew attention to the downsides of all of this in other sections of the newspaper. Kathy Sheridan and I did a series on the commuter counties about people having to get up at 6 a.m., get on the road by 7 a.m. and all the rest of it, if they were to get to work in Dublin by 8.30 a.m. I do not think it is fair to say that the media were uncritical of what was going on. I believe those of us who recognised there was a real problem developing were voicing those opinions.

**Deputy John Paul Phelan:** Did the witness voice those concerns himself internally at the time? Did he express those views?

**Mr. Frank McDonald:** I did yes. I was writing it.

**Deputy John Paul Phelan:** I know he was writing publicly, but did he express those concerns internally?

**Mr. Frank McDonald:** I am sure I did because I was horrified by what was happening. When a rather undistinguished house in Shrewsbury Road, Dublin was sold for the staggering sum of €58 million, that obviously had to appear on the front page of the paper because it was so staggering. My reaction to it was that whoever spent that kind of money on a house like that must be out of their mind.

**Deputy John Paul Phelan:** I want to change tack because I do not want to put the witness personally on the spot about his own views. We had Dr. Peter Bacon in with the committee last week. He is the author of some very well known reports on the housing sector. He is of the view that the property market in Ireland was too much dominated by internal forces. He expressed strongly the view there were not enough publicly rated companies involved in funding the property sector and there was not enough investment in the property sector from outside the island of Ireland. Does the witness share Dr. Bacon's views on that? Does he think a broader base of investment might have had a different impact on the direction of the property sector in Ireland?

**Mr. Frank McDonald:** I do not know if that would necessarily follow, unless the banks were to have changed their lending policies. It was the unlimited supply of nearly free credit, or very low interest credit, that fuelled the boom, not the personalities involved.

**Deputy John Paul Phelan:** I have two brief final questions. In his book *The Builders*, co-authored with Kathy Sheridan, the witness details the careers of many of the largest developers and builders in Ireland prior to the crisis. Can the witness outline briefly how he would describe their approach to business? Does he believe that their entrepreneurial approach had an impact on the subsequent boom in prices and the difficulties which arose from that?

**Mr. Frank McDonald:** Developers were out to make money. There is nothing wrong with that and we should not be surprised about it. That is what they do. There is no point in building something for sale unless one can get a good price for it and make a profit in the process. That is the basis of the system we have and the developers operated it. Again, they had an unlimited supply of credit available to them. If they wanted to buy a site for €10 million or whatever, it was no problem to them to get the money from the bank. Every acquisition was funded separately, sometimes even by a consortium of banks. The determination would be there then to secure the maximum amount of development on that particular site, so that one ended up with these vast schemes such as the Beacon South Quarter and other places like it. It was like little pieces of Los Angeles were appearing in south Dublin. One was left wondering what on earth was going on.

**Deputy John Paul Phelan:** Was there an appreciation among those builders and developers of the risks they were taking on, particularly towards the end of the boom period, in terms of the huge sums of money that were being borrowed, often from multiple institutions, as Mr. McDonald mentioned? Or was there a belief, as he touched on in his statement, that this was just going to continue, that these people had always turned a profit and would continue always to be lucky?

**Mr. Frank McDonald:** The problem in any bubble is the perception that the only way to go is up. The warning seen at the end of some advertisements for financial products which says "Markets may go down as well as up" was forgotten during the boom. Developers forgot it, too.

A massively overpriced asset did not seem massively overpriced to them at the time because they were all caught up in this belief that everything was onwards and upwards. That was the risk.

**Deputy Pearse Doherty:** Cuirim fáilte roimh Mr. McDonald go dtí an coiste. He made quite a strong statement regarding the decision making that went on in local authorities outside of Dublin when he said he has “no doubt” that corruption was involved. Will he elaborate on that? What did he observe that led him to make such a strong statement to this committee of investigation?

**Mr. Frank McDonald:** I observed the most irrational decisions being made by local authorities in terms of the zoning of land. In some cases, as I mentioned, more land was being zoned than would be needed for decades. That is to say, so much land was being zoned that it would take decades to develop it all. Yet, the plan-making period was supposed to be five years. Every development plan has a life of five years, so all that should have been zoned was sufficient land to cover that five-year period, perhaps with a possible 20% extra as a landbank in case it was needed. What was happening, however, was that massive amounts of land were being zoned for development in different parts of the country, particularly in Leinster, because councillors were under pressure from landowners to get their particular parcel zoned for development so they could make the money and go.

**Deputy Pearse Doherty:** Is Mr. McDonald allowing for councillors’ stupidity in terms of maybe not knowing what they were doing? We do not want to get into individual names because that is forbidden at this stage of the inquiry, but Mr. McDonald’s statement clearly indicates corruption, which is an illegal activity. Based on what he observed, is he suggesting there was a transfer of cash or payment to individuals?

**Mr. Frank McDonald:** No more than in the case of County Dublin, I was not there to witness brown envelopes being handed over, but I have no doubt that the phenomenon of planning corruption or land rezoning corruption, whatever one wants to call it, was not an exclusively County Dublin phenomenon. It would be fatuous and nonsensical to think it was confined to County Dublin; it was not.

**Deputy Pearse Doherty:** What is Mr. McDonald’s view in regard to the closing down - “halting” might be a better term - of the independent investigations that were planned for seven local authorities and subsequently replaced by reviews?

**Mr. Frank McDonald:** I was appalled by what happened; I am still appalled by it. There were very substantial allegations made in regard to what was going on in those seven local authorities but the Department of the Environment had no interest in investigating what was really going on. None of the allegations was effectively examined and a kind of whitewash was thrown over the whole thing. Do not forget that one of the central recommendations of the planning tribunal was that there should be an independent planning regulator appointed. That is not going to happen. The terms that have been announced in this regard do not involve the holder of that office being independent.

**Deputy Pearse Doherty:** Mr. McDonald has pre-empted my next question, which is what we need to do looking forward. He has suggested an independent planning regulator should be appointed, as recommended by the tribunal. In regard to what happened in the past in terms of corruption in the planning process outside the confines of Dublin, how is that best dealt with?

**Mr. Frank McDonald:** We really do need an independent planning regulator who would have the power to investigate allegations of substance in regard to what is going on in whatever local authority it happens to be.

**Deputy Pearse Doherty:** The property-State-finance nexus - the linkages between property, the State and the finance sector, and the implications thereof - is what we are discussing under this module. What are Mr. McDonald's thoughts on that dynamic? How would he describe it and what is his opinion of it based on his extensive research, particularly for the two books I have in front of me?

**Chairman:** Is the Deputy referring to the pre-crisis years?

**Deputy Pearse Doherty:** Yes, I am talking about the lead-up to 2008.

**Mr. Frank McDonald:** Those relationships were very close. The construction industry, in particular, is very well connected, not just with the present Government but also with previous Governments, and very well able to lobby politicians and all the rest of it. To give an example, there was a case some years ago where the then Government had the option of introducing higher energy performance rating requirements for houses and higher energy performance standards in general. That initiative was deferred, as a result of which approximately a quarter of a million houses were built during the boom period which have the most woeful energy performance and will all now have to be retrofitted. The reason that happened, as an FOI request to the Department of the Environment, Community and Local Government revealed, was that the building regulations were going to have to be changed. It was going to happen sooner rather than later due to the targets set under the Kyoto Protocol on climate change. However, the memo went on to say, "We don't want to signal this to the outside world just yet because the next leap in building standard insulation will probably involve making it difficult for the hollow block construction used widely in the Dublin area to survive". What is that except playing to a vested interest? So what if there were guys making hollow concrete blocks in Dublin? They can do something else. Why was it regarded as being so important that this particular sector be protected? These guys were building crap houses. Let us be clear about that. These houses were rubbish, from an energy performance point of view, and yet the Department of the environment allowed it to go on and on. It was only in recent years that we finally caught up with the idea that we needed to have higher energy performance in housing, so that people do not have to spend so much money on fuel and all the rest, and we can cut down emissions.

**Deputy Kieran O'Donnell:** I welcome Mr. McDonald. His expertise is on what happened with the environment and building. With all his writings over the years, was he ever approached or contacted by bankers, developers, government or officials in Departments about his writings?

**Mr. Frank McDonald:** In what way?

**Deputy Kieran O'Donnell:** About a critical comment. Clearly, Mr. McDonald has written three or four publications that were quite critical. He has also written extensively in the *The Irish Times* on various aspects over the period. Was he contacted by people on what he had said?

**Mr. Frank McDonald:** Yes, I would have been.

**Deputy Kieran O'Donnell:** What was the tone of those comments, by way of example?

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**Mr. Frank McDonald:** I suppose if one lashed out against the construction industry then the Construction Industry Federation would get on to one, or perhaps the editor, to complain about the treatment that was being meted out. I know that various property developers, over the years, made representations to editors of *The Irish Times* in regard to what I was writing. I continued on and I did not feel intimidated. I was never personally threatened by anybody.

**Deputy Kieran O'Donnell:** Did bankers make an approach?

**Mr. Frank McDonald:** I had very little contact with bankers throughout the period. I am not sure that they, particularly, got on to complain about what I was doing. Very few of them - I do not think any of them - got on to me personally. I did meet bankers, on occasion, but that was in a social context.

**Deputy Kieran O'Donnell:** Did Mr. McDonald consider, in terms of dealing with bankers and developers, that they felt they were invincible in that period?

**Chairman:** Please reframe the question.

*(Interruptions).*

**Deputy Kieran O'Donnell:** Obviously somebody is trying to contact me.

**Chairman:** I ask the Deputy to reframe his question. The interruptions by the mobile telephone did him a favour.

**Deputy Kieran O'Donnell:** Does Mr. McDonald consider, over that period, that certain people who were involved in the construction sector felt they were invincible in terms of the way they acted?

**Mr. Frank McDonald:** Absolutely.

**Chairman:** Deputy O'Donnell could use the term, "Did their behaviour", rather than ask a leading question.

**Deputy Kieran O'Donnell:** Let us say from Mr. McDonald's view of their behaviour, did they exhibit signs that they were invincible?

**Mr. Frank McDonald:** Yes. It was shown, even at a banal level, by the size of their cars and helicopters.

**Deputy Kieran O'Donnell:** Mr. McDonald spoke about the bankers. He said, "Bankers also played the role of touts for developers". In his experience, was it a feature around that time of individual bankers going into joint ventures with developers?

**Mr. Frank McDonald:** Yes.

**Deputy Kieran O'Donnell:** I refer to where the bank, in which they worked, provided funding. Was that a feature?

**Mr. Frank McDonald:** Yes, it was and it worked for everybody. I mean it worked for the bank and it worked for the developer.

**Deputy Kieran O'Donnell:** Were there procedures in place, be it with the banks in terms



of their internal controls or the Financial Regulator, where one could not have a situation where they were both poacher and gamekeeper? I refer to where the individual banker worked within the bank.

**Mr. Frank McDonald:** When Bank of Ireland was founded by David La Touche back in the 1780s, or thereabouts, prudence would have been a central concern of people like him, that they would not involve themselves in irresponsible lending. That they would only lend-----

**Deputy Kieran O'Donnell:** The question I asked Mr. McDonald was-----

**Chairman:** I ask the Deputy to please allow Mr. McDonald to answer his first question. I shall bring in the Deputy again for his last question.

**Mr. Frank McDonald:** Prudence was dumped. Basically, that is what happened.

**Deputy Kieran O'Donnell:** Did the banks have rules within their institutions where, effectively, they stated that bankers could not be involved in joint ventures with developers of which the bank provided funding?

**Mr. Frank McDonald:** I am not aware of that.

**Deputy Kieran O'Donnell:** My final question is in terms of our inquiries into the banking crisis. What does Mr. McDonald believe was the single factor, in terms of his experience, that contributed to the banking crisis?

**Mr. Frank McDonald:** The first signs of it were the sub-prime lending crisis in the United States, being constantly assured that the same situation did not apply here and there was no such thing as sub-prime lending, etc. In fact, that is what was going on. People were being lent much more money than they could afford to repay which is, by definition, sub-prime. That is what lay at the heart of the matter.

When we first got the warning signals from the United States, with Fannie Mae, Freddie Mac and whatever else all basically falling apart as a result of irresponsible lending, in effect the writing was on the wall. Except that here we were in denial that this was, in effect, what was happening - that money was being lent, on an unlimited basis, for overpriced assets.

**Deputy Kieran O'Donnell:** From what time?

**Chairman:** I thank Mr. McDonald.

**Deputy Kieran O'Donnell:** Sorry.

**Chairman:** Deputy O'Donnell is out of time and I call Senator Michael D'Arcy.

**Senator Michael D'Arcy:** I thank Mr. McDonald for attending. He has put a lot of play on zoning. I shall ask about the checks and balance, following on from zoning, and the provision of services. Does that have to do with councillors?

**Mr. Frank McDonald:** It does because one cannot have development without providing services. Once lands were zoned for development, it became inevitable that services would have to be provided for that land.

**Senator Michael D'Arcy:** Mr. McDonald made the assertion earlier that zoning was to happen on the basis of it standing for the five-year period of the local area plan. In a lot of cases,

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the checks and balance within the system was that the Department did not provide funding for water and-or water and sewerage.

**Mr. Frank McDonald:** Yes, but do not forget that the local authorities had development levies which were very substantial, and still are, so that they could raise huge sums of money themselves. For example, I was astonished to discover recently that if one wanted to convert a Georgian house in Merrion Square from office use to residential use by, say, putting in five flats or one flat per floor, that one would have to pay a development levy to Dublin City Council of €60,000. That is when one is doing something that is clearly in the public interest. It is clearly in the public interest that the Georgian squares of Dublin, on the southside in particular, should be returned to residential use, to the greatest possible extent. Yet the local authority was screwing the developers who were planning to do so.

**Senator Michael D’Arcy:** I am trying to say to Mr. McDonald that there were checks and balances. If the Department or local authority were dissatisfied with a zoning there was another method in which the funding was not provided.

**Mr. Frank McDonald:** That did happen, certainly. What more particularly happened was that eventually a Minister for the Environment decided to avail of the powers that he had, to call in a draft local area plan, county plan or whatever for review by the Department and that started happening. I think it was in 2003 or 2004. It was the first time that the power was actually used. If I am not mistaken, I think it was by Dick Roche, then also by his successor, John Gormley, and that was pretty much it. That was a check and balance, if one likes.

**Senator Michael D’Arcy:** Was it used?

**Mr. Frank McDonald:** Yes, it was used.

**Senator Michael D’Arcy:** Could I ask Mr. McDonald about the guideline on sustainable residential development in urban areas, which went back as far as 1999? It was effectively a guideline for the planners on the quantum of units per acre. What is Mr. McDonald’s view on the figure for villages and small towns, which was from 400 to 2,000?

**Mr. Frank McDonald:** Four hundred to 2,000 what?

**Senator Michael D’Arcy:** People. The guideline was for up to 20 houses or units per acre. What is Mr. McDonald’s opinion on that guideline?

**Mr. Frank McDonald:** I think there is an irrational fear in this country over residential density. I would defend it on the basis that it makes for a more compact urban environment than we would have otherwise. If we were to build at the rate of eight to ten houses per acre, which used to be standard in the past, we would have housing everywhere. There was a strong argument for higher densities. That does not mean high rise; it just means building to a higher density than we were used to in the past. It sustains local services. If one has-----

**Senator Michael D’Arcy:** Can I pursue this because my time is running very short? If there are 400 in a village, or three people per house and 150 or 160 houses, and one adds 20 houses per acre, that is seven acres. That doubles the size of a residential unit.

**Mr. Frank McDonald:** The residential development.

**Senator Michael D’Arcy:** Yes. My point is that it is a big island with a small number of people. The guidelines were the same guidelines, the one-fits-all-----

**Mr. Frank McDonald:** I agree with the Senator that-----

**Chairman:** The high-density residential developments guidelines.

**Senator Michael D'Arcy:** Yes.

**Mr. Frank McDonald:** I obviously agree with the Senator that the high-density residential developments guidelines were intended to apply largely to cities rather than villages.

**Senator Michael D'Arcy:** They applied to communities of 400 to 2,000.

**Mr. Frank McDonald:** That is true but I still believe that if one looks at the density at which Irish towns were built in the past, including the 19th century and even earlier, one will find it would be up to that level.

**Senator Michael D'Arcy:** Of the 11 of us on the inquiry team, eight were councillors at some stage. Mr. McDonald was very harsh on councillors. If he were itemising the mistakes made overall in terms of councillors in conjunction with planners, the guidelines and An Bord Pleanála, how would he lay the blame?

**Mr. Frank McDonald:** As between the different-----

**Senator Michael D'Arcy:** Sectors.

**Chairman:** Errors.

**Senator Michael D'Arcy:** Sectors.

**Chairman:** Errors, yes.

**Mr. Frank McDonald:** In relation to zoning, obviously the councillors had the whip hand there. As I suggested earlier, I think An Bord Pleanála had a moderating influence on what was going on. That was one of the checks and balances, if one likes. That is something I certainly welcomed but I think that everybody was at fault in believing that we could have development everywhere. That was the fatal flaw.

**Chairman:** How much did the demand, or perceived demand, for one-off housing impact upon that general culture?

**Mr. Frank McDonald:** The demand?

**Chairman:** For one-off housing.

**Mr. Frank McDonald:** That is a different thing really because it involves individuals essentially providing houses for themselves.

**Chairman:** But development plans would get changed because of a petition or motion before a local authority to change or facilitate-----

**Mr. Frank McDonald:** Yes. In the past there were section 4 motions, as they were known, and then they were renamed. I cannot remember what the latest one is.

**Senator Michael D'Arcy:** Section 47.

**Mr. Frank McDonald:** Section 47. I thank the Senator. That was notorious and it was used

widely in rural local authorities to grant planning permissions for developments that would otherwise-----

**Senator Michael D’Arcy:** Only in some.

**Chairman:** The Senator is over time. The witness is responding to me. I ask Mr. McDonald to continue responding.

**Mr. Frank McDonald:** Everybody was culpable to a greater or lesser extent, whether one is talking about the councillors, the planners or others. The main thing that they were culpable of really was believing that we could have development everywhere, and that there would be something for everyone in the audience. I do not believe the one-off housing phenomenon had very much to do with the banking crisis, as such; it just meant that people were able to get money more easily to build larger houses, so one ended up-----

**Chairman:** The question I am putting to Mr. McDonald is on the rigidity and fluidity of development plans. What would have been the cultural impact in this regard?

**Mr. Frank McDonald:** The culture is an anti-planning culture in this country. There is still a belief that people have a right to do whatever they like with their own land. They ask who these planners are to come and tell them that they cannot. That is a particularly prevalent and deep-rooted view that exists pretty much right across the country. That makes it very difficult for planners to point us in a more rational direction. If there is not a consensus on the need for planning - planning essentially involves making tough decisions about what we are going to do and what we are not going to do - it is an issue. We are not used to being told we cannot do things. We do not want to be told we cannot do things; we want to be told we can and that, if one has a half-acre site, of course one will get planning permission to build on it. That is why we have 500,000 houses all over the countryside in Ireland.

**Deputy Joe Higgins:** In regard to the nexus of property interests and developers, Mr. McDonald relates back to TACA, the fund-raising venture for Fianna Fáil in the 1960s involving significant property interests. He then moved forward to the Galway tent, where developers socialised with senior Fianna Fáil politicians. Does he say there is an unbroken thread from the 1960s to the 2000s in relation to inappropriate and close relationships between developers and senior politicians, a political party or parties?

**Mr. Frank McDonald:** Yes, it is a continuous thread.

**Deputy Joe Higgins:** Mr. McDonald covered extensively the Dublin county development plan from 1991 to 1993. He wrote a series of articles at that time referring to Dublin county. The headline of one of those articles alludes to “where it is possible to boost the value of parcels of land beyond the dreams of avarice”, and another headline reads, “Cash in brown paper bags for councillors”. In that series of articles, Mr. McDonald termed the 72-member Dublin County Council as a rezoning coalition. What did he mean by that?

**Mr. Frank McDonald:** What I meant by that was that at successive meetings, which were taking place more than weekly, as Deputy Joe Higgins will recall having been a member of the council at the time, there was a coalition of interest in facilitating development, as between Fianna Fáil and Fine Gael. The Labour Party in general opposed-----

*(Interruptions).*

**Mr. Frank McDonald:** In general a rezoning motion would be supported by Fianna Fáil and Fine Gael councillors and opposed, in general, by Labour and some others on the council, including Deputy Higgins. I am not saying that Labour was consistently against zoning land. In fact, there were several cases where they supported in some cases even controversial zonings. There was a presumption in favour of development in that chamber. I do not believe that there is any doubt about that and whatever the developers or the landowners wanted to do was, in general, facilitated.

**Deputy Joe Higgins:** Did tribunals make any findings in relation to councillors' activities during that period?

**Mr. Frank McDonald:** Yes, they did. The tribunal did make findings.

**Deputy Joe Higgins:** In 1993 in one of those articles Mr. McDonald referred to a former councillor who, in defending the extensive rezoning in Dublin County Council said, "I have never put a boundary to the onward march of a nation." Mr. McDonald said, "If this type of planning prevails we will start hitting the outskirts of Dublin in or around Kinnegad." When I was rereading that I had echoes of Macbeth being told his fate would be sealed if "Birnam wood do come to Dunsinane," his castle.

**Mr. Frank McDonald:** That is right.

**Deputy Joe Higgins:** It is more a case of the castle coming to Birnam wood in Mr. McDonald's prognosis.

**Mr. Frank McDonald:** Yes.

**Deputy Joe Higgins:** Did the outskirts of Dublin come to Kinnegad?

**Mr. Frank McDonald:** Yes.

**Deputy Joe Higgins:** What were or are the implications of that?

**Mr. Frank McDonald:** It was not just Kinnegad. Virtually everywhere in Leinster was subsumed into a sprawled Dublin. I mentioned Rochfortbridge. It was in the mid-1990s that I remember passing through Rochfortbridge on the way back from Galway and being shocked to discover that there seemed to be, as it were, suburban housing estates being built up around it and it seemed to me to be like bits of Ballinteer, as it were, that ended up 80 km away. The same was happening in Portlaoise, Gorey, Drogheda, Dundalk and Cavan. It was happening everywhere.

**Deputy Joe Higgins:** Mr. McDonald---

**Chairman:** I am giving Deputy Higgins two minutes.

**Deputy Joe Higgins:** The 2007 register of Dáil Members found that the following percentages of TDs were either landlords or owned commercial residential investment property: 39 of 78 Fianna Fáil TDs, 50%; 49% of Fine Gael TDs; and 20% of Labour Party TDs. In 2013 the register showed 27% of Members of the Dáil were registered landlords. In 2007 an RTE "Prime Time" documentary found 22% of councillors dealt in or developed land in their day job as estate agents, landowners and builders. On the face of it this would seem objectively to be an unusually high concentration of property interests among public representatives at local and national level. Does Mr. McDonald believe that this might---

**Chairman:** This is the Deputy's final question.

**Deputy Joe Higgins:** Does Mr. McDonald believe that this might have influenced planning decisions or influenced the light touch regulation that existed during the creation of the bubble and which has been referred to in evidence to the committee? Does he believe that that may have influenced the attitude that political parties took in Dáil Éireann between 1997 and 2007? For example, what role did Opposition parties play at that time in relation to the bubble that was being created?

**Mr. Frank McDonald:** I think there is no doubt about it that politicians who come from an estate agency background or who are otherwise involved in property would have a benign view of development. It goes back to the point that I made that there was a presumption in favour of development everywhere and I would say that that applied with knobs on in cases where the local authorities were populated by people from the property sector who immediately understood why a particular piece of land should be zoned or not, as the case may be.

**Deputy Joe Higgins:** Did it influence the Dáil in the pre-bubble period?

**Mr. Frank McDonald:** I am not sure about whether it influenced the Dáil or not but I think that one has to pose the question as to why is it that the Kenny report was never implemented. I believe the reason that happened was because there were too many people who were potential beneficiaries of not implementing it. That is what happened.

**Deputy Eoghan Murphy:** I have three questions. The first is following on from Deputy Higgins. Did Mr. McDonald find this presumption in favour of development among officials as well? What relationship does our development-led planning process have to that?

**Mr. Frank McDonald:** Yes, it was a view held by officials as well, particularly county managers in my experience. Professional planners were much less enthusiastic about the wilder aspects of development than county managers were. In counties that had a perception of themselves as having not done terribly well in the past that was their chance to improve their lot, as it were. In some cases, indeed in many cases, the recommendations of professional planners were overturned by county managers. In fact, I know of one county manager who said, "Do not be giving me reports recommending refusals."

**Deputy Eoghan Murphy:** Is it Mr. McDonald's understanding that the investigations that were to take place, the external investigations into certain councils, were to look into that kind of behaviour?

**Mr. Frank McDonald:** Yes, and more. Not just that but also other stuff as well but the substance of the allegations were never examined in those inquiries that took place. That is the problem. There was an unwillingness to face up to the maladministration and worse that took place in various counties that were named and were the subject of so-called investigations. The investigations were not actual investigations in the sense that there was no determination to find out what really went on. For example, the people who were making the allegations were never interviewed.

**Deputy Eoghan Murphy:** Where does Mr McDonald believe that unwillingness came from?

**Mr. Frank McDonald:** The system.

**Deputy Eoghan Murphy:** The system just in itself was not willing to investigate itself.

**Mr. Frank McDonald:** The system does not want light to be thrown on the way it operates, in effect.

**Deputy Eoghan Murphy:** Who has responsibility for ensuring that light is thrown on the system when it needs to be?

**Mr. Frank McDonald:** The Minister for the Environment, Community and Local Government. Successive Ministers for the Environment, Community and Local Government, it seems to me, going back to the mid-1990s were unwilling to do that.

**Deputy Eoghan Murphy:** My second question is in relation to Mr. McDonald's opening statement in which he talks about no effort being made to enforce the anti-sprawl guidelines.

**Mr. Frank McDonald:** The greater Dublin area strategic planning guidelines.

**Deputy Eoghan Murphy:** Exactly. Would there have been competing pressures from other interested groups not to enforce those guidelines?

**Mr. Frank McDonald:** Yes.

**Deputy Eoghan Murphy:** For example, from a residents' association or from a body like An Taisce.

**Mr. Frank McDonald:** No, I do not believe that was the case at all. An Taisce and any sensible residents' association in Dublin would certainly have supported the strategic planning guidelines for the greater Dublin area. Those guidelines became yet another example of the way we do things in this country which is we write loads of stuff down as aspirations and aims and objectives and mission statements and all the rest of it but there is no determination behind it to actually implement what is written down. The strategic planning guidelines for the greater Dublin area that date from 1999 turned out to be a total paper tiger.

**Deputy Eoghan Murphy:** My final question is intended to get Mr. McDonald's opinion on something because it is something I am trying to think through myself. In Mr. McDonald's opinion is there an ethical difference between a councillor taking money to vote a certain way and a Minister or a Government party introducing a tax incentive after receiving donations from someone who will then benefit from it?

**Mr. Frank McDonald:** No. They are the same, it seems to me.

**Deputy Eoghan Murphy:** I thank Mr. McDonald.

**Chairman:** Senator Susan O'Keeffe has six minutes.

**Senator Susan O'Keeffe:** In reading Mr. McDonald's book there is a thread that runs through it relating to private clients, high net worth individuals, coming together and forming private syndicates. In some cases he names some of those members and I am wondering whether he knew the names of others and did not name them or did he only name the ones he did know.

**Mr. Frank McDonald:** I know many of them.

**Senator Susan O'Keeffe:** Were politicians ever involved in these private syndicates?

CONTEXT PHASE

**Mr. Frank McDonald:** I do not know that for a fact, but I know people who were involved in-----

**Chairman:** We will not speculate.

**Mr. Frank McDonald:** I know people who were involved in syndicates, if that is what the Senator means-----

**Senator Susan O’Keeffe:** Yes.

**Mr. Frank McDonald:** -----and both made and lost a lot of money.

**Chairman:** We will not speculate about names.

**Senator Susan O’Keeffe:** I was not asking for names. I am asking Mr. McDonald if any of the names is that of a politician, either at national or local level?

**Mr. Frank McDonald:** Not that I am personally aware of.

**Senator Susan O’Keeffe:** In terms of the private syndicates, obviously people were offered the opportunity to make money. Does Mr. McDonald know if there was any tax benefit in the way the syndicates were structured?

**Mr. Frank McDonald:** I do not know that for a fact, but I know that, in general, people who were high net worth individuals would have been under a lot of pressure to take part in different syndicates. They would receive telephone calls from people telling them that they were being too cautious and too conservative and that they needed to have more leverage. “Leverage” was a polite word for debt. In other words, they needed to get into more debt for their own good and that they would make loads of money in the end, but sometimes it did not work out like that. Sometimes things went down rather than up.

**Senator Susan O’Keeffe:** Obviously, some of the syndicates set up parts which were offshore or out of the country.

**Mr. Frank McDonald:** Yes.

**Senator Susan O’Keeffe:** Would that have helped, in any way, any of these high net worth individuals?

**Mr. Frank McDonald:** Yes, of course, it would have. If it was set up in an offshore tax haven, of course, it would benefit the individuals involved. It would be a way, in effect, to evade Irish tax.

**Senator Susan O’Keeffe:** In a way, along with the capacity to create a profit, in borrowing to build, there was also this other piece that could offer that opportunity.

**Mr. Frank McDonald:** Yes, but do not forget that I have drawn attention to the property-based tax incentive schemes which explicitly encouraged people to invest in order that they would make loads of money out of it.

**Senator Susan O’Keeffe:** I do not know if Mr. McDonald knows the answer to this question, but I will ask it. In regard to the Asset Covered Securities (Amendment) Act 1997, was there a noticeable change in the way commercial lending occurred after that?



**Mr. Frank McDonald:** I have no idea.

**Senator Susan O’Keeffe:** Mr. McDonald mentioned in his book that Government Departments and semi-State bodies were, if one likes, tenants of some of the developers. Will he explain whether this, in any way, contributed to the closeness between them or was it just because they had to locate somewhere?

**Mr. Frank McDonald:** I do not think there was anything of particular importance in relation to it. It was normal for property developers to own office buildings or whatever else which would end up being rented to the State. In the past it was certainly true that connections were used to arrange for State tenants. In other words, a developer, before embarking on a particular office block, for example, would already have lined up a semi-State company or a branch of the Civil Service to occupy the building, which then made it a complete blue chip or a no fail investment.

**Senator Susan O’Keeffe:** In Mr. McDonald’s knowledge, was it done through people knowing each other or through-----

**Mr. Frank McDonald:** Yes.

**Senator Susan O’Keeffe:** It was done through people knowing each other, not through a tender or anything else.

**Mr. Frank McDonald:** That played a role in it in many cases, but it would not have been exclusive. There would have been straightforward lettings of buildings owned by somebody, but that would have been completely coincidental.

**Senator Susan O’Keeffe:** Why does Mr. McDonald think planning officials who would have watched some of what he has described today as zoning of extraordinary proportions stayed quiet?

**Mr. Frank McDonald:** Because they had their jobs to protect. If one was working for, say, Dublin City Council and one had grave reservations about what was going on in the council chamber, what could one have done? Planners and other public servants would have tipped us off about things coming up because they were so appalled by what was going on. I am delighted they did this. It is very gratifying to know that there are public servants who are concerned about the public interest and the public interest being subverted to serve private interests and profit. It was very dispiriting for the planners, in particular in County Dublin but elsewhere also. They saw rational planning being thrown out the window for the cause of somebody or other who owned a particular parcel of land to make a few bob.

**Senator Susan O’Keeffe:** We know a little about the way some public representatives were paid. They literally received money. Is Mr. McDonald aware of any other rewards people were given or offered? Were they offered houses or shares in companies? Will Mr. McDonald tell us a little about what he knows?

**Mr. Frank McDonald:** It is true that there were other ways of paying people. For example, in lieu of a fee, an architect might have been given two or three flats in a scheme which would have been section 23 qualifying investments. That kind of *quid pro quo* stuff goes on all the time in this country. It appears to be tax efficient as well.

**Senator Susan O’Keeffe:** Is it still going on?

**Mr. Frank McDonald:** I would say it is

**Senator Sean D. Barrett:** I welcome Mr. McDonald. He talked about tax breaks and so on. Would he have misgivings about real estate investment trusts, REITs?

**Mr. Frank McDonald:** I do not know enough about them to be able to say, but I suspect it is another way of keeping investors happy.

**Senator Sean D. Barrett:** The Kenny report states the President, when asked to sign the Bill, should refer it to the Supreme Court under Article 26 of the Constitution. In fact, Dr. Elaine Byrne records that the secretary in the President's office was quite cross about this. Was it an own goal by Mr. Justice Kenny? I have never seen a report stating that if one is worried that what is being recommended is unconstitutional, one should ask the President to refer it. If one is in a favour of something, one leaves it up to the President to decide.

**Mr. Frank McDonald:** That may have arisen in the context of there being a majority report and a minority report. The minority report specifically raised the issue of whether the proposed measure was constitutional. I think this may have motivated Mr. Justice Kenny to recommend that it be referred by the President to the Supreme Court.

**Senator Sean D. Barrett:** I think it arose first on the corner of Hume Street and then in a case near Swords, but how did the State come to be on the hook when planning permission was refused? I think €1.9 million was paid in 1989 because planning permission had been refused. That meant the officials in the council had to undertake the rezoning which Mr. McDonald strongly and rightly criticised. I am trying to think of an analogy. If people apply to get into medical school but do not get in, they do not have a right to compensation from the dean of the medical school. How did this arise in the property market?

**Mr. Frank McDonald:** It was one of the real fears of many local authorities and arose, in particular, in County Dublin. It was built into the 1963 Act. I think it was in it to vindicate the property rights people had under the Constitution in order that if a local authority refused planning permission for a development, one could sue it for compensation on the basis that it had devalued one's property. There were several notorious cases where a case would then go to the State property arbitrator and the decision would either be upheld or the amount of money involved would be reduced. There are several very good examples of where this happened, about which Senator can find out.

**Senator Sean D. Barrett:** I refer to development levies. Do they make local authorities which are supposed to be adjudicating on this issue in the wider national interest partners in allowing projects to go ahead? I am thinking of the case of Meath County Council in rezoning parts of Carton which were turned down by An Bord Pleanála. The incentive for the council and the officials was that there would be loot for the local authority.

**Chairman:** Will Mr. McDonald comment on that? It is more of a statement than a comment.

**Mr. Frank McDonald:** There is no doubt that this was going on, not just in terms of development levies which became a huge source, at least theoretically, of new revenue for otherwise cash-strapped local authorities. There was an incentive for them to grant planning permission because they would get, say, €60,000 or €200,000 in development levies in return. It became one of their major money-spinners during the boom period. Many of these levies, as we now know, were not paid, however, because the market had collapsed and the developers had gone

to the wall or whatever.

It was not just development levies. The other factor that played a crucial role in determining whether something was permitted or not was the long-term benefit to the council of the rates revenue that a development could generate. For example, every shop in the huge complex of Dundrum Town Centre is paying rates to Dún Laoghaire-Rathdown County Council. The council, not surprisingly, facilitated that scheme even though it contributed to the death of the Main Street in Dún Laoghaire.

**Senator Marc MacSharry:** Does Mr. McDonald feel the media acted as a cheerleader for the boom?

**Mr. Frank McDonald:** In what way? Does the Deputy mean in terms of property-related stuff?

**Senator Marc MacSharry:** Yes.

**Mr. Frank McDonald:** I think the media became dependent to a substantial extent on revenue from advertising which was related both to property and to recruitment. Every Friday, there would be a huge supplement with loads of ads for jobs for chief executives and God knows what else. Every Thursday, one would have the property supplement. At one stage, *The Irish Times* property supplement was so large it was in two sections. There was a 12-page opening section and then a 48-page follow-up section as there was so much going on. It became a major revenue earner for the media, including *The Irish Times*. As I said, whatever about perceptions of this leading to a cheerleader situation for the property boom, we were offsetting any such perception by carrying relatively critical pieces about how Dublin was developing and other issues that were the downsides of the boom.

**Senator Marc MacSharry:** Are journalists aware of the amount of advertising coming in from a particular sector like that?

**Mr. Frank McDonald:** In my experience and in my own case, I could not care less to be honest. Yes, it was good the newspaper was getting revenue but it would not have influenced me in any way. I do not believe it would have influenced most other journalists in any way.

**Senator Marc MacSharry:** In Mr. McDonald's experience, was there ever an approach from an editor to him or others asking them to be a little more sensitive, could they try this or do that?

**Mr. Frank McDonald:** In 1994 I wrote an article about the phenomenon of the shoebox flats being built in Dublin under the section 23 tax incentive scheme. It took me a few months to get that into the newspaper and not into the property supplement but into the arts section. It was fairly in your face in terms of what it was saying about the quality - rather the lack of quality - of the apartments then being produced in Dublin.

**Senator Marc MacSharry:** Would Mr. McDonald have been aware in his investigative journalism over the years of any entertainment of editorial staff by property companies?

**Mr. Frank McDonald:** Yes, that happened regularly.

**Senator Marc MacSharry:** How did it manifest itself?

**Mr. Frank McDonald:** One would be invited to lunches, launches or whatever.

CONTEXT PHASE

**Senator Marc MacSharry:** A Champions League final?

**Mr. Frank McDonald:** I presume that happened as well. I personally never got tickets for a match.

**Chairman:** We will not be speculative on this.

**Senator Marc MacSharry:** Or other such events?

**Mr. Frank McDonald:** I never got tickets for a match out of any of them.

**Senator Marc MacSharry:** Is there a code of ethics in *The Irish Times* for journalists in terms of their interactions with politicians?

**Mr. Frank McDonald:** Yes.

**Senator Marc MacSharry:** How would it deal with interaction with the property sector?

**Mr. Frank McDonald:** *The Irish Times* ethics code in the past certainly included a provision that no journalist could accept a trip - a junket as we would call it in journalistic parlance - from anybody that was not the Government or a Government agency. In other words, one did not take offers from the private sector.

**Senator Marc MacSharry:** It had to be a State-sponsored job then.

**Mr. Frank McDonald:** In effect, yes.

**Senator Marc MacSharry:** Was Mr. McDonald aware of any collaboration between newspaper publications and the property sector on, say, housing schemes in terms of shared profit or some other such benefit that would be derived directly, other than the payment of the fee for the advertising, as a result of progress in the sales of a development?

**Mr. Frank McDonald:** I am not personally aware of that.

**Chairman:** Thank you Senator.

Just to develop on from Deputy John Paul Phelan and Senator MacSharry on the general coverage of how the property sector was doing at the time, particularly in regard to residential development. Was it at the time developing or not developing a sense of anxiety among prospective purchasers, particularly first-time buyers, about getting access to the property ladder?

**Mr. Frank McDonald:** Do you mean were we promoting this?

**Chairman:** What impact was the general coverage having on prospective property buyers, first-time buyers and so forth?

**Mr. Frank McDonald:** In a property bubble situation, everyone thinks it will continue going up in spectacular leaps from year to year. Some years there was a 20% increase in property values, etc. Naturally, for anyone trying to get on to the ladder, as it became known, that would have induced almost a sense of panic. First-time buyers were panicked into buying at ridiculously inflated asset values like €450,000 for a two-bedroom flat for example. One of the problems we have in this country - it was certainly the case during the boom - is that we accept far too many things as normal that are not normal.

**Chairman:** This was the narrative at the time.

**Mr. Frank McDonald:** Yes and that people needed to step back but they could not step back for some reason because they were all caught up in it.

**Chairman:** One final question brings us full circle. The purpose of this inquiry is not just to look at the past but to look into the future and see what lessons can be drawn. With regard to my earlier engagement about how the planning laws deal with one-off housing, it is commonly noted that the Irish people have a love affair with property. There is a high percentage of home ownership compared to other similar countries. Was that the case and does it still hold despite the crash? Given that this is in our DNA, to use the term Mr. McDonald used earlier, how might this be responded to best to protect the public interest in the future?

**Mr. Frank McDonald:** It is undoubtedly true that we value owning our own home, initially with the aid of a mortgage but ultimately a person eventually becomes the owner. One of the nicest letters I ever received was from the EBS saying that my loan was paid off. That happened two years ago and I thought that it could not be happening at a better time. The devotion to the idea of property ownership is related to the cultural and historical legacy of Ireland, and history of dispossession and fear of dispossession, which is something that makes the rental market such a minority thing. It is quite normal in Switzerland, Germany and other continental countries for people to rent rather than buy because it is more convenient for them and they do not fear being thrown onto the street. Here, there is a fear that people have no security if they rent so they need to buy. As to what can be done about it, we are talking about a cultural shift, which takes time.

**Chairman:** Has the cultural shift taken place?

**Mr. Frank McDonald:** Not yet, but I live in hope that it will.

**Chairman:** I thank Mr. McDonald for his participation today in an informative and invaluable meeting that has added to our understanding of the factors leading to the banking crisis in Ireland. We will excuse the witnesses and I propose we suspend until 2.30 p.m. This afternoon, there will be two modules dealing with the nexus phase of the inquiry and preparing for the media modules next week. I propose that our meeting runs no later than 5 p.m. and we will finish before that if possible.

Sitting suspended at 2.03 p.m. and resumed in private session at 2.30 p.m. The joint committee adjourned at 5.30 p.m. until 9.30 a.m. on Wednesday, 25 March 2015.