

LAND READJUSTMENT: TOOLS FOR URBAN REGENERATION

workshop, Gwangon Republic of Korea, 12-16 Dec 2016

dr Barrie Needham

Land readjustment in Germany

1. The setting

Land readjustment is most commonly practised on the edges of existing urban areas, where land ownerships are very dispersed, because of laws regulating inheritance.

Applicable also for developed land. I.e. urban regeneration. But not used much for this.

The public and the politicians want effective control over location and quality of new development. This is not possible by passive planning where land ownerships are very dispersed. And passive planning is limited in recovering costs for infra etc.

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2. Procedures

Two possible forms of land readjustment;

- compulsory: imposed and exercised by the municipality;
- negotiated: the existing owners agree among themselves to readjust their ownerships according to the land-use plan.

For the compulsory readjustment (amtliche Baulandumlegung);

- the authorised agency is the municipality.

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2. Procedures (special features)

- starting the procedures freezes changes of land uses and transfer of rights in land;
- a standard for the redistribution of readjusted land is selected;
 - : standard of relative value / standard of relative size;
- municipality may retain a fraction of the land for public uses;
 - : this must not exceed 30% of the readjusted land;
 - : if the land is being readjusted for a second time, the fraction may not exceed 10%;
- if after reallocation the actual value of the land received is less than the 'fair' value (according to the standard of relative value of the standard or relative size), the owner is entitled to compensation;
- if someone prefers to leave his property idle, only under extraordinary circumstances can he/she be compelled to change it in accordance with the new plan.

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3. The experience

In practice, most land readjustment projects are decided by negotiated agreements.

Nevertheless, legally they are registered as compulsory, in order to benefit from tax advantages etc.;

- 'consenting compulsory land readjustment' (vereinbarte amtliche Umlegung);
- a 'carrot-and-stick' approach to land readjustment;

Most landowners included in a land readjustment project are happy with the procedures and the outcomes.

But: some are happy with their existing situation and do not want to change it.

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4. The legal challenge

A complaint was taken to the Federal Constitutional Court. The argument was that mandatory land readjustment is a 'taking', so the procedures should follow the procedures prescribed for that.

Court decision:

- "The law helps landowners to unfold the full freedom of their property by preparing land for development. If the existing boundaries remained unchanged, the land would never be used for building purposes."
- Baulandumlegung is for the good of (a few) private persons, whereas 'Enteignung' may be used only for the public good. Therefore, this form of land readjustment is not expropriation.

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5. Alternatives for land readjustment in urban areas

Expropriation might be effective, but is politically unpopular;

Land-use plan;

- : municipality not allowed to capture development gain as such;

- : but can require a contribution towards the costs of infrastructure etc. (Erschliessung). But with a maximum of 90% of those costs. And the municipality wants to be able to cover all the costs, also to cover the costs of additional facilities such as land for environmental compensation.

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Land readjustment in Israel

1. The setting

Most land (93%) is owned freehold by the state, but disposed of to others, public and private, on long leases.

All property rights are strongly protected by law, especially against expropriation, and long leases are protected as strongly as freehold;

Complicated land ownership patterns with vested development rights;

Population growth and urban growth are high, so need for much urban development;

Potential building land is scarce and expensive, so providing land for public services is very expensive;

Municipalities are financially weak and have few ways of financing the provision of public services and public infrastructure;

Land readjustment is used for this purpose;

It is the preferred way of realising development schemes.

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Land readjustment in Israel

2. The procedures (special features)

The regular planning bodies (local planning commissions) are authorised to conduct land readjustment by embedding it in a local outline or detailed plan. No separate procedures specifically for land readjustment plans.

There are two tracks, consent and non-consent:

- : consent: all owners agree. Then there are no further formal rules;

- : non-consent (= compulsory): at least one owner does not agree. There are hold-outs. Then the special rules apply

 - e.g. each reallocated plot should be as close as possible to the original plot

Even in consent cases, the formal rules are usually applied.

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2. The procedures (special features)

Reallocation can produce not only separate plots for each original owner, but also plots in joint ownership. In such cases, the owner of a shared plot may demand a buy-out. Formally there are no other possibilities for an original owner to demand that he/she be bought out;

In practice, the resulting shared ownership is usually a condominium right, and the original owner gets an apartment of a size which matches the proportionality rule, and which is fully tradable. Moreover, the price then paid is often less than the new market value. So people do not want to demand that they be bought out.

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Land readjustment in Israel

3. Alternatives to land readjustment

- expropriation. Severely limited, politically unpopular, municipalities have little money to pay the compensation, long and expensive procedures;
- regulatory takings. But the legal rules for compensation result in very expensive payments;
- negotiated dedication, when someone applies for planning permission which would increase the land value greatly (planning gain agreements).

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3. Alternatives to land readjustment (contd)

- compulsory dedication (planning agreements, etc.) whereby the granting of a planning permission is made legally conditional on making part of the land available for public needs. This is a strong possibility in Israel: up to 40% of the land area may be required, and for a variety of purposes (roads, playgrounds, schools health clinics, sports facilities, community buildings, even religious facilities). But:

: for most new developments, 40% is too little;

: the plots to which it can be applied are too small to assemble the plots which are required in the appropriate sizes and locations;

: the procedure is becoming increasingly contested.

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Land readjustment in Japan

1. The setting

Reconstruction of Tokyo after the earthquake of 1923 and the reconstruction of Tokyo in the late 1940's;

Highly fragmented land ownership on the urban fringe, partly because of land reforms that deliberately broke up large holdings and redistributed them to the tenants;

Traditionally, little land in public use (e.g. for roads, schools, parks);

Extremely strong land ownership rights and strong political powers of land owners.

Land readjustment had been carried out in 30% of the total urban area (2003).

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Land readjustment in Japan

2. The procedures (special features)

Two sorts of sponsors (initiators):

: an association of landowners;

: local government;

A legal body is established to carry out the project. The board of directors must include members from the sponsoring agency, and in all cases it must include some landowners. Also, a council of landowner representatives is established.

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Land readjustment in Japan

2. The procedures (special features)

The consent of landowners is solicited:

: for association-led projects, the legal requirement is that 66% of landowners owning 66% of the land must sign a contract consenting to the project;

: for local government projects, that is not necessary. But in practice, land readjustment projects are difficult to implement without a high degree of consensus. The rule of thumb is 80%;

: the replotting design, financial plan, project implementation plan and land contribution of each landowner must be approved. Again, for association-led projects, the legal requirement is that 66% of landowners owning 66% of the land must give their legal assent to the plan;

When the finances can be wound up, the project is finished and the organisation dissolved. If there is a financial shortfall, it must be paid by the project sponsor. Surpluses must be spent within the project area.

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Land readjustment in Japan

3. Alternatives to land readjustment

Expropriation:

: this is legally possible but in practice extremely difficult;

Land-use plan and development control;

: but land can be divided as-of-right, and land owners are able to develop plots smaller than 1000 sq.m. without a development permit. Land owners can sell land at full development value without bearing any costs of the infrastructure that creates those values;

Developer contributions:

: but mechanisms for ensuring that land developers provide basic public goods such as local roads, sewer systems, local parks and even schools when they develop land to urban use are weak (especially when compared with some other countries). And local governments have little finance for acquiring the land and providing those facilities.

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Land readjustment in Japan

4. Why has land readjustment been so widely applied in Japan?

Japanese tradition of collaborative and consensual decision making and little emphasis on individualism, preference for working in groups, deference to authority, recognition of hierarchy;

But this is diminishing, and opposition to land readjustment projects is growing;

Nowadays, the most planned projects are abandoned – because of opposition - before they are legally initiated;

Whether the provision of infrastructure will increase land values enough to offset the land contribution and the long project implementation (which can take 5 to 30 years) is difficult to calculate. And the collapse of the land market in Japan since 1992 together with the population decline makes such increases less likely.

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Land readjustment in Japan

4. Why has land readjustment been so widely applied in Japan? (contd)

Local government has few other means of achieving basic infrastructure in areas of urban growth;

In practice, most land readjustment projects are initiated not by collaborating landowners, but by local governments;

If landowners participate, it is largely from self-interest.

In order to put pressure on landowners to participate:

: stricter control on land use change outside the built up area, in order to restrict urban development without land readjustment (which results in urban sprawl);

: the possibility of downzoning land which is provisionally zoned for development, if agreement to initiate a land readjustment has not been reached.

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Land readjustment in the Netherlands

1. The setting

Much of the land in the Netherlands was / is wet and low-lying;

In order to put it to productive use (for agriculture, building) it has first to be drained in one way or the other;

This cannot be done efficiently on a small scale;

In the Middle Ages it was done by monasteries, water boards, feudal landlords;

Since the beginning of the 20th century, by municipalities;

The result is large areas of land suitable for integrated development (either agriculture or urban): de facto land assembly;

And a long tradition of active public involvement in land, with the citizens trusting public bodies to do that honestly and openly (the 'water hypothesis').

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Land readjustment in the Netherlands

2. Four types of land readjustment

a) To consolidate dispersed agricultural land holdings, so that the new holdings can be farmed more efficiently (ruilverkaveling).

This has been practised on a very large scale. More than two thirds of the total agricultural land in the Netherlands has been consolidated, reallocated or readjusted and improved or reclaimed during the second half of the twentieth century. And it has determined the present form of rural Netherlands.

It is not the subject of this workshop.

But it has produced conditions which are relevant for *urban* land readjustment in the Netherlands (see below).

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Land readjustment in the Netherlands

b) For the development of new urban areas (1).

Most new urban development since the end of the WWII has been carried out in the following way:

: the municipality makes a plan for the new development;

: it acquires all or most of the land within the plan area. Often this has then to be drained before it can be serviced for building upon;

: it divides the land into building plots, puts in roads and services, allocates land for schools, parks, etc.;

: disposes of the building plots to developers (public and private) at prices which at the least cover the costs. In this way, it is a form of value capturing.

This is land readjustment in the sense that dispersed land holdings (agricultural) are acquired by one agency and assembled so that the whole area can be developed in an integrated way.

But: the new building plots are not offered back to the original owners.

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Land readjustment in the Netherlands

b) For the development of new urban areas (1).

Why do the original owners agree that their land be acquired by the municipality? And at prices considerably less than full development value?

: they cannot develop it themselves, because their plots are too small and they cannot provide the necessary services;

: but they could sell it to commercial developers;

: and municipalities are given no legal priority when trying to acquire such land;

: except expropriation powers, which they have to apply only rarely.

In effect, farmers sell their land voluntarily to municipalities at less than development value, and the development gains are used to supply infrastructure and other public facilities.

Why do commercial developers not challenge municipalities?

Because they consider that municipalities can assemble and service the land better than they (commercial developers) could, moreover the municipality bears all the financial risks.

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Land readjustment in the Netherlands

c) For the development of new urban areas (2).

About 20 years ago, commercial developers did start to challenge municipalities as suppliers of development land.

A practice has arisen spontaneously of voluntary land readjustment at the initiative of private land owners. They judge it to be more in their commercial interest than if each developer tried to develop the land itself.

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Land readjustment in the Netherlands

c) For the development of new urban areas (2).

Commercial developers buy land from farmers, then approach the municipality with the proposal that the developers and the municipality together service the land.

- : a land pooling agency is set up (often a public-private partnership);

- : the commercial developers contribute their land to this agency;

- : if there are parcels of land which the developers have not been able to acquire and which would be necessary or desirable for a more integrated development, the municipality acquires this, using expropriation powers;

- : the assembled land is then serviced as a whole;

- : the resulting building plots are allocated to the commercial developers according to agreed guidelines;

- : the commercial developers build houses, shops etc.

- : the agency builds the infrastructure and transfers it to the municipality;

- : the agency is wound up.

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Land readjustment in the Netherlands

d) For the redevelopment of *existing* urban areas in an integrated way.

If the usual way of *new* urban development in the Netherlands (active municipal land policy) were applied in existing urban areas for urban *re*-development, it would be very difficult to cover the costs, for the values of the existing buildings are high. And land holdings are often very dispersed.

Most of those existing buildings would have to be expropriated, at more than existing use value.

If redevelopment were to be left to private developers, they could not do this in an integrated way (no way of assembling the plots).

And the infrastructure improvements would have to be paid largely by the municipality, for there is no effective method of value capturing.

So urban land readjustment is an interesting possibility.

But there is no legislation for this.

Nevertheless, there is political and professional interest in working this out further.

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Land readjustment in the Netherlands

3. Conclusions from the Dutch experience

Necessary conditions for land readjustment (of whatever type):

- strong and sustained trust in the government and its various institutions;
- broad-based and well informed platform of interest and support among the people (especially the landowners) for the changes;
- availability of subsidies where necessary;
- national technical institutions with long memories;
- strong and broad consensus about the long-term wishes.