

Land Development Contracts – A Comparative Study in Finland and in the Netherlands

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Key words: Land Development, Public Private Co-operation, Finland, the Netherlands.

ABSTRACT

This paper is based on a comparative study made by both authors. The study includes a comparison of public-private co-operation in land development process both in Finland and in the Netherlands.

The land development process involves the acquisition of raw land, detailed physical planning, improvements of soil, construction of the infrastructure and building site disposal. The land developer can be the local government (municipality) or a private enterprise or the two in co-operation. In Finland and in the Netherlands the municipalities have played remarkable roles in producing building sites for the use of housing, retail, offices and industry. Increasing the role of private enterprises is a topical issue in both of the countries.

The adequacy of housing sites in particular has been a problem in the Netherlands, which is a small densely populated country in Central Europe. Finland is a rather large and sparsely populated country in Northern Europe, but because of the movement from sparsely populated rural areas to bigger cities in the south, there is a scarcity of building land in these cities.

The implementation of the Fourth National Planning Report Extra (also known by its Dutch acronym VINEX) of 1990 in the Netherlands was the turning point from the municipal land development to the increase of public-private co-operation and partnership carrying out this task. In Finland private land development and the associated public-private partnership was much utilised in the Greater Helsinki in the 1960's and 1970's. The role of the private enterprises has later been slighter, but during the present real estate boom the question of their role is again becoming more important.

Different alternative contract models are presented, evaluated and classified. In the end a general four-dimensional model is presented. The dimensions are: type of land, owner of land, model of co-operation and type of contract.

ZUSAMMENFASSUNG

Grund dieses Absatzes ist ein Vergleichstudium der Autoren nach der Zusammenarbeit öffentlicher und privater Akteure im Baulandentwicklungsprozess in Finnland und den Niederlanden.

Die Baulandentwicklung umfaßt die Erwerbung der Bauerwartungsgelände, der Bebauungsplanung, der Erschließung, und den Verkauf des fertigen Baulandes. In Finnland und den Niederlanden haben Kommunen eine große Rolle in der Baulandentwicklung gespielt. In den letzten Jahren sind aber private Bau- und Entwicklungsgesellschaften an der Erschließung von Bauland mehr interessiert und es gibt neue Kooperationsmodelle von öffentlichen und privaten Akteuren.

Verschiedene Kontraktmodelle werden präsentiert und klassifiziert. Ein Modell öffentlicher und privater Zusammenarbeit wird präsentiert. Dimensionen dieses Modells sind Landtype, Eigentümer, Kooperationsmodell und Art der Vereinbarung.

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1. INTRODUCTION

The change of the welfare state involves a transfer of centralised authority towards decentralised regional and local government. The municipalities change their role from being the local ‘arm’ of the welfare state to acting as the catalyst of processes of innovation and co-operation, often between public and private parties. (Mayer 1994, 325.) Local government becomes a hybrid organisation. New forms of public-private collaboration emerge and have their influence on the development process.

Both the Netherlands and Finland have a strong involvement of local government in the land development process. They may be regarded as forerunners in the processes sketched above. The experiences with public-private co-operation in Finland and in the Netherlands are therefore highly relevant to the newly emerging roles of local governments elsewhere.

1.1 Land Development Process

The land development process involves the acquisition of raw land, detailed physical planning, improvements of soil, construction of the infrastructure, implementation of the public areas, parcelling, and building site disposal. Voluntary purchases are mostly used at land acquisition, but expropriation is also possible. This is the first phase, when different agreements are possible. Land use planning determines the building rights and regulations. Improvements of land involve drainage and raising to above the groundwater level, decontamination activities to clean up pollution and providing the infrastructure. Public areas to be implemented are the streets, parks etc. Parcelling includes parcelling, registration in the cadastre and title registration.

According to the Finnish legislation, the municipalities build the streets, parks, waste water pipes etc. in the detailed planned areas, even in the areas owned by private companies or persons. The Finnish municipalities cover these expenses from their normal yearly budgets, in principle from the income taxes. Usually the organisational unit of construction takes care of the construction, and the unit of surveying buys, sells and leases out the land and the building sites.

In the Netherlands either the municipality or a private company can take care of the land development process. In many cases the municipal land development companies are implementation agencies. These municipal companies take care of the costs and have to cover the costs by using their incomes by selling or leasing out building sites. The municipalities can cover the costs partly by governmental grants. If a development area is unprofitable, other areas ought to make profit to balance the funding. In this case the land development process is very much a financial and economic process with financial accounting.

2. PUBLIC-PRIVATE CO-OPERATION (PPC)

The land developer can be the municipality (local government) or a private enterprise or the two in co-operation. However, in Finland and in the Netherlands the municipalities have played remarkable roles in producing building sites for the use of housing, retail, offices, and industry. Increasing the role of private enterprises is a topical issue in both of the countries.

In Finland the municipalities have made two kinds of agreements with the private companies. Firstly, they have bought and sold land, exchanged land and leased it out as normal contracts. Secondly, they have moved their legal responsibilities to the private partners using land development contracts on different levels: construction of the infrastructure, realisation, land use planning, area building, and co-operational contracts. The municipalities in the Netherlands obviously do the same.

Public-private co-operation (PPC) is an issue full of fear and hope. In the Netherlands the public parties have nightmares that PPC involves a combination of loss of command (and democratic principles) and transfer of profits to the private parties without transferring the risks. They also fear that the jobs of the present public servants are at stake and that the involvement of private parties (who need to make a profit) inevitably ends up to higher prices. On the other hand, the protagonists of PPC have visions of completing the professional expertise between the local government and the private parties. They believe that the involvement of private parties will produce better product market combinations and more efficient production processes. And last but not least, PPC might be an insurance policy against political opportunism, and will safeguard the continuity of development.

In practice there is often a situation of mutual mistrust in which PPC emerges. In this context the public sector is asking for political reality, real participation in the risks, and a long-term quality of development. The private sector wants a realistic perspective in return for investments, sufficient control of the cash flow and a good position in the management and information. In general the emphasis of the municipalities is more on quality (according to the policy documents), whereas that of the private parties is on the control of the financial risks.

2.1 The History of Private Land Development in the Netherlands

The success of the Dutch strategic planning (Faludi & van der Valk 1994) in performance of the national and provincial visions on urban spatial development was based on the allocation of central government grants according to a shared conceptual frame and the active involvement of the municipalities in the development process. According to the traditional post-war conception, the municipalities should supply land for development (Needham 1992; Van der Krabben & Lambooy 1993; Badcock 1994; van der Krabben 1995; Needham & Verhage 1998). The municipalities considered that it was their duty to supply serviced land as it was needed. The implementation of the Fourth National Planning Report Extra (also known by its Dutch acronym VINEX) of 1990 in the Netherlands was the turning point from the

municipal land development to the increase of public-private co-operation and partnership carrying out this task. (Korthals Altes 2000.)

Since the end of the eighties the central government has emphasised the importance of co-operation between the public and the private sector. The municipalities get information on the advantages of closer co-operation, e.g. the reduction of risks in land development. The climate for co-operation has improved. A private company as a landowner is no longer seen just as a problem, but as an opportunity of getting some benefit, too (de Wolff 1997, 3). On the other hand it has been raised up the issue that the private developers take care of the profitable places and leave the less profitable ones to the municipality.

2.2 The History of Private Land Development in Finland

In 1895 to 1930 there were twenty companies acting as land speculators in the outskirts of Helsinki. They bought land near the railways and sold it to ordinary people for building sites. (Vuorela 1979, 31-32.) This was possible since building permits did not become compulsory in the rural municipalities until 1949 (*City of Vantaa* 1979, 48).

The first private area for land development in Finland was the area of Käpylä in Helsinki in the 1920's (Vuorela 1977, 196). The legal form to realise Käpylä was co-operative. On grounds of the good experiences in Käpylä, big social organisations and other authorities established housing associations of public utility in the end of the 1930's for building dwellings (*City of Helsinki* 1973, 21 and 27; Herten & Itkonen 1985, 32).

In 1958 the building law came into force. The law regulated that town planning became a monopoly of the city. This meant that the urban municipality (city) was due to make decisions on town plans. The situation in the rural municipalities was different at that time. In the rural municipalities the landowner and the municipality could make an area building plan together. The landowner could also make a proposal for an area building plan direct to the provincial authority, and then the municipality gave a statement on the suggested plan. The provincial authority duly ratified the plan. This situation and the scarcity of building land in Helsinki in the end of the 1950's effected constructors to move to the municipalities next to Helsinki. Under these circumstances a housing association (Asuntosäätiö) bought land in Tapiola and started to develop it. Tapiola was planned and built totally by Asuntosäätiö. (Rönkä 1989, 16-17.)

The first features of true land development can be seen in the 1950's in Espoo where the first agreements concerning public works were made. For instance, in Niittykumpu a municipal authority constructed the water supply line to the area and the building constructor paid for it. A similar agreement was made in Vantaa (Kaivoksela) in 1964. (Rönkä 1989, 17.)

Land development became more common in Helsinki in the 1950's when the city council of Helsinki disposed larger areas to one or several construction companies (*Kaavoitus- ja rakennusasiain neuvottelukunta* 1968). Helsinki, Espoo and Vantaa started to agree on land management on the land of the constructors after 1965 in the proper sense of the word. (Rönkä 1989, 17.)

The new Land Use and Building Act came into force on 1.1.2000. The land development contracts are mentioned for the first time, but no more precise rules are given.

3. CO-OPERATION ALTERNATIVES

This Chapter presents co-operation alternatives first in the Netherlands then in Finland, comparing them with those in the Netherlands. Finally, a general four-dimensional model of land development contracts is presented on the basis of this.

3.1 Co-operation Alternatives in the Netherlands

The traditional model, in which the municipality takes care of land development in total and disposes building sites to the constructors, is still in use in the Netherlands. In public-private co-operation it is possible to separate four different models: exchange of land for building rights, integral development, joint development, and the concession model.

3.1.1 Exchange of Land for Building Rights

The municipalities are no longer the only buyers on the land market. Many developers and building companies buy land in potential areas for building. Most of the Dutch municipalities consider the production of building land still as a municipal task. They are therefore anxious to buy the land. The developers and building companies are often willing to sell their land to the municipality. Their interest in the land is not primarily making a profit on the land, but a method of acquisition for building and project development. In exchange for the land they receive money (often less than they acquired the land for) and the municipality permits building volume for them. Thereafter the municipality takes care of the implementation of the infrastructure. After that the private partner gets the possibility of buying building sites. The private partner is often allowed to influence on the town plan of the area. In this model the municipality bears most of the financial risks of land development.

Table 1. Supplementary agreements with building rights (Groetelaers, 2000)

Agreements	Percentage of building rights
Site within location where building may take place	66%
Land prices	63%
Obligation to buy	56%
Right to be consulted in planning process	41%
Others	34%
No supplementary agreements	6%

Insight in the nature of the building rights involved in the ‘exchange model’ (Table 1) is given in a recent study (Groetelaers, 2000). It is mostly settled for which price and in which place the development company may buy back the plots to be developed. In about a half of the cases the development company also has the obligation to buy the plot. In those cases the market risks of selling the plots are not transferred from the developer to the municipality.

3.1.2 Integral Development

The municipality is responsible for the main structure of the area. The main roads, major parks and water works are developed by the municipality. In the integral development a part (say sites for 500 dwellings) of the planned area is transferred to the private parties. The programme and the recovery of costs for the main infrastructure are regulated in the agreements. IJburg (near Amsterdam), and Ypenburg (near The Hague) are examples of this model.

3.1.3 Joint Development

In this model either a municipality or a company owns the land. It may be transferred to a joint public-private company. The risks and the management of the area are shared by the municipality and the private parties in the joint venture company. The share of the municipality differs. In the development area (7,000 dwellings and 270,000 sq. metres) of Leidschenveen near The Hague, the share of the municipality of Leidschendam is 30%. In other areas the municipal share is often 50%. The risks are shared in this model.

3.1.4 Concession Model

In the concession model the development is primarily private. The municipality recovers costs for the infrastructure outside the plan. Unlike the other models the municipality shares no market risk in this model. The agreement includes the stipulations between the private and the public partners. The private partner bears the risks and the concession model is therefore mostly used in economically good cases.

After the changes in the late 1980's the position of the municipalities is still remarkable. The municipal choice of the way the area will be developed is crucial in the development process (see also Van der Cammen et al., 1998). When negotiating an agreement the municipality may choose the option that the land-owning constructor will not be developing the area. This alternative means more cost on interests on the bought land. A municipal land use plan (*bestemmingsplan*) or decision in anticipation of a new plan is a necessary precondition for development. In practice every developer makes an agreement with the municipality. The dominant form of co-operation between the market parties and the municipalities is that the land is sold to the municipalities in exchange for development rights.

Most of the Dutch municipalities prefer public development, which is often achieved by the exchange of rights (see Table 2). The percentage 'public development' is even higher when converted to the number of dwellings to be built. The municipalities especially may want to control the land development process in larger areas, in order to certify an integral and diverse development. Private involvement in larger areas often lies in public-private partnerships (joint development), whereas in many smaller areas private companies work in concession.

Table 2. Development approach (Groetelaers, 2000)

Development approach	% areas	% dwellings
Public development	58%	68%
Public-private partnership	9%	22%
Private development	15%	5%
Combination	6%	2%
not yet decided	11%	2%

For only 11% of the urban extension areas (2 % of the dwellings to be built) the municipalities answer that they do not know (yet) what development approach they will follow.

3.2 Co-operation Alternatives in Finland

The absence of legislation concerning land development agreements has lead to various kinds of solutions in different parts of Finland. But this has simultaneously made an adaptable tool for land policy fit for the realisation of the areas and the division of costs between the different parties. For the first time in the new Land Use and Building Act which came into force in 2000 land development contracts are mentioned, but unfortunately no more precise orders were given.

In Finland the researchers have made various classifications of the land development co-operation. The first one is based on the types of the landowners and presented in Table 3.

Table 3. Types of the land development contracts (Vuorela 1977)

Landowner	Type of contract
Municipality	Reservation decision and disposal agreement
Constructor	Land development contract
Municipality and constructor	Co-operation contract
Other	Land development contract

Rönkä (1989, 47) argues that the development contracts are rather similar and not dependent on the type of the landowner and presents a division of the contracts in three categories (Table 4). The regular land development contracts are typical concession areas constructed by one company. Characteristic of the so-called land disposal contracts is that the area passes from the constructor to the municipality. In the site disposal contracts the municipality is the original owner of the area.

Table 4. Types of the land development contracts (Rönkä 1989, 47)

Type of contract	Special features
Regular land development contracts	Land owner as the contractor for construction (Concession)

So-called pre-agreements (area transfers from the constructor to the municipality)	The original landowner is other than the municipality 1) Constructor acquires funding for the purchase 2) The pre-agreement made by the constructors is transferred to the municipality 3) Municipality "buys" land against permitted building rights (Exchange of land for building rights)
Site disposal contracts	Municipality as the original landowner 1) Municipality disposes sites to several constructors (Traditional model) 2) Municipality disposes sites to a constructor as a compensation for permitted building in other areas

The regular land development contract model resembles the concession model, but the stipulations may limit the possibilities of the private party. Mostly the town planning (physical planning) totally rests with the municipality.

The so-called pre-agreements are divided into three parts. The first alternative can be used in a case where the municipality has not enough funding of its own and a constructor acquires funding for the land purchase to the municipality. In the second the constructor has made a pre-agreement on land purchase or land development with a landowner. The constructor may transfer this pre-agreement to the municipality against the possibility of getting building rights. In the third the municipality buys land against building rights. This is similar to the Dutch "*Exchange of land to building rights*" model.

The site disposal contracts are regular land purchases, in which the municipality sells its own land to constructors. This contract can be made in a juridical form of pre-purchase defining how much building rights, where and when a constructor gets. The case 1 is similar to the Dutch *traditional model*. The case 2 is used in a case where the municipality and the constructor have made a development agreement in some other area and the municipality is not willing to make a land use plan according to the contract in that area. Then the municipality compensates this loss by building rights in the area.

Most of these models may include some kind of joint development, but the *joint venture* model has not been used in Finland.

Hautamäki (1999) has made a study of land development agreements in Finland in 1995 to 1998. He classified the agreements in the following way (Hautamäki 1999, 12): framework agreements; raw land agreements for housing, retail or industry; alteration of land use; addition of permitted building rights; small-scale realisation; real estate purchases; and construction of infrastructure.

Similarities to the previous contract types are obvious with the framework agreements, raw land agreements and small-scale realisation. New phenomena in the end of the 1980's and in the 1990's are the contracts concerning the *alteration of land use* and *additions to the present building rights of a built site*. These contracts are needed for the landowner in case of some

kind of renewal. These are normally situated in the centre of the cities. As these sites already have buildings the question is about the extension of the old buildings or rebuilding.

3.3 A General Four-dimensional Model of Contracts

Summarising all these co-operation alternatives together we find that there are many different versions. But when investigating them closer, we can find similarities in both of the countries. In principle all of them can be included in a four-dimensional model (Table 5). This means that every agreement can be placed in one category of all of these four dimensions.

Table 5. Classification of public-private co-operation

Dimension	Category
Type of land	Raw land
	Unbuilt sites
	Renewal
Owner of land	Municipality
	Constructor
	Housing developer
	Other
	Mixture
Model of co-operation	Traditional
	Exchange for building rights
	Integral
	Joint
	Concession
Type of contract	Framework
	Pre-agreement
	Site disposal
	Infrastructure construction

4. CONCLUSIONS

In Finland the municipal authority is general and comprehensive and the municipal administration is based on self-government by the residents. In the Netherlands the municipalities have a constitutional rooted autonomy. Both of the countries have the monopoly in making physical land use plans (zoning) and have played remarkable roles in land policy and land development. Important for their involvement with the public sector is that they have enough financial capacity for co-operating with the private sector.

In both of the countries the municipalities have traditionally produced most of the building sites for construction. In the Netherlands the situation changed after the implementation of VINEX report in 1990 and increased the public-private co-operation. In Finland the same happened in the area of the Greater Helsinki already in the 1960's when the rapid increase of population forced the municipalities in the Greater Helsinki to secure sufficient amount of

building sites.

The public-private co-operation in land development can have many different forms from the traditional model, in which the municipalities produce building sites, to the concession model, in which the private partner takes care of the whole area according to the stipulations of the agreement. In the Netherlands some joint public-private companies have also been established to carry out this business.

The models of public-private co-operation in Finland and in the Netherlands have many common characteristics. In both of the countries there is a distinction of the market for land development, and project development. In both of the countries the traditional model is that the municipalities have an 'active land policy', i.e., the municipalities buy the land, service it and sell the building sites to the market parties. In both of the countries the traditional model has been extended by a site disposal model, in which the landowners sell the land to the municipalities with the right to buy back the serviced plots. Thus the private sector in Finland and in the Netherlands is not primarily interested in servicing the land, but in developing real estate on the land. In both of the countries there is also a concession model in which the private parties are developing the areas themselves within a framework provided by public law and plans, and agreements with the local governments. The main difference is that in the Netherlands there are also joint ventures of municipalities and private companies for the development of extension areas. These joint ventures, however, are primarily used for the so-called larger VINEX areas of several thousands of dwellings. In those areas the secondary infrastructure, i.e. main artery roads, large parks and recreational features, are indigenous to the area. This makes government involvement relevant. The concession model is hardly ever used in this kind of area.

Our analyses of Finland and the Netherlands lead to the conclusion that in spite of large differences more universal ways of handling these issues can be found. The ground for a land development agreement is always the benefit of both of the parties. The municipality benefits when areas become realised according to the goals of the municipality. The landowner benefits by getting building rights and faster development in the area. In most cases the contracts include division of the costs for building the infrastructure. In most cases the municipality constructs the infrastructure and the private party pays for that, delivers land (streets, parks, building sites, etc.) or buildings (for public use).

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