



הטכניון - מכון טכנולוגי לישראל
TECHNION - ISRAEL INSTITUTE OF TECHNOLOGY

Center for Urban and Regional Studies

Planning, Property Values and Property Rights

The value capture and compensation issues revisited

Rachelle Alterman

Professor, Urban planner and lawyer

*President of the International Academic Association on
Planning, Law, and Property Rights*

FIG Eilat May 7 2009

Forthcoming book - American Bar Association Chicago

Takings International

**A Comparative Perspective on Land Use Regulations and
Compensation Rights**

Rachelle Alterman

The Issue

- Almost all countries today have planning laws (though not all implement and enforce them)
- Wherever land-use regulation is applied to the rights to use or develop land, there may a rise or depreciation of land values
- The plus side – “betterment” or the “unearned increment” - is not the focus here; however, it has commanded considerable international academic and organizational interest, and resurfaces as a policy agenda from time to time in different countries
- However, the reverse – compensation for decline in property values – has been on a “low burner” of national or international discussion or academic research. The USA is an exception.
- Yet the differences among countries in law and policies in an era of globalization is bound to kindle the internal debates within countries



Some history and terminology

- The “classical” conceptualization of the relationship between regulation and land values is anchored in Britain since 1909.
- In Britain and international literature, known as “betterment” and “compensation” (or “betterment and ‘worsenment’”)
- Thorough re-thinking towards the end of WWII - Canonical British government report. Since 1947 – dramatic revolution in conception of planning regulation - “development rights” abolished, therefore compensation rights.(mostly) abolished.
- Since then in the UK: Many vicissitudes on the “betterment “ side, but no revisit of the compensation issue.
- Americans don’t have an official term – professionals use “windfalls and wipeouts” - and “takings and givings”

Why is cross-national learning relevant?

- ❑ The current state of systematic comparative knowledge is rudimentary
- ❑ Different countries have different constitutional, statutory and practice rules about rights to compensation
- ❑ Analytical comparison may help to frame the internal debates within countries and give them a sense of SCALE
- ❑ Assessment of outcomes in those cases where there are compensation rights may provide some “simulation” for other countries considering a change in laws or policies – but it is difficult (and not part of this research)

Examples of situations where a land-use planning decision may reduce private property values

All situations discussed do not involve direct expropriation; title remains and the landowner remains in control of access, transfer etc.

- 1) A former land use plan had permitted intensive development, but the landowner did not utilize these; an amendment to the plan (= zoning) reduces the development rights (but does not take them all away)
- 2) A rural area had not before had a statutory land-use plan and landowners had traditionally built farm homes, workplaces, storage areas. A new plan now limits land use to agriculture and there are much more limited development rights
- 3) An owner of farmland near an area of quick urban expansion submits a request for rezoning to permit development but the request is rejected
- 4) A new plan is under preparation. Meantime, a freeze is placed on issuing building permits – for a limited number of years
- 5) A plot of land is designated as agriculture and expectations of development are disappointed

Examples of situations – cont.

- 6) A plot of urban land is designated as open space, but is not necessarily slated for expropriation
- 7) A plot of land is designated for future expropriation but is not expected to be needed for 10 years and government is not yet expropriating
- 8) A major highway is planned. Landowners bordering the new highway are not expropriated but land values decline sharply
- 9) An area next to a quiet neighborhood is rezoned, from public open space (park) to a school. The values of the bordering homes decline
- 10) Landowners in a quiet single-family neighborhood learn that a neighboring plot is designated for a high-rise residential tower – land values decline because the view is blocked, more traffic...
- 11) Same as above, but the single-family neighborhood is not yet built – only as development rights now reduced in value



The compensation-rights span of policies

No compensation rights
except for physical
expropriation

Extensive
compensation
rights

← A broad range of interim positions →



The Countries included in the systematic comparative research project:

- The USA
- Canada
- The UK
- France
- The Netherland
- Sweden
- Finland
- Germany
- Austria
- Poland
- Greece
- Israel
- Australia

The Findings: Compensation rights around the world

No compensation rights (minimal)

**The UK
Canada
Australia
France
Greece**

Moderate or ambiguous

**Finland
Austria
The USA
[the special case of Oregon]**

Broad compensation rights

**Poland
Germany
Sweden
The Netherlands
Israel**

Key findings

- There is a great variety of laws and practices among the countries (and within single countries)
- There are major differences among countries in compensation rights
- There are major differences even among European countries despite the shared European Convention on Human Rights
- There are major differences even among neighboring countries with shared cultures
- Often, the findings per country are counterintuitive and cannot be “predicted” based on other attributes of that country’s history, socio-economic policies or even macro land policy.

Conclusions

- The issue of whether there should be compensation rights and for what situations merits attention and solid policymaking
- The research findings indicate that there is a large pool of very different laws and practices around the world which may be viewed as alternative policies
- International comparative analysis and evaluation can provide a relative scale, and some “previews” of some of the legal, financial and other public policy issues and impacts that might arise

Thanks for your attention.

Write me at alterman@technion.ac.il