

Sustainable Urban Development in Cases of Complicated Land Ownership Situations

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SUMMARY

Urban development usually is a result of planning activities of municipalities and / or private investors. Because of limited public budgets, public-private-partnership has played an important role in urban development during the last decade.

If there are only very few landowners in a project area, private negotiations and contracts can change the land ownership situation according to the planning scheme. This method of land purchase only succeeds if the landowners sell their plots voluntarily to the municipality or investor.

In many countries there is also a land acquisition method for project sites that have many landowners. That means that the landowners can be forced to sell their land and if the negotiations fail, they can become expropriated.

An interesting alternative to cope with a greater number of landowners in a project area is so called "land readjustment". It is an excellent land exchange method and case studies will illustrate that this modern type of land management realizes its goal of sustainable urban development, taking into account ecological, economic and social aspects.

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“There is a sense of great opportunity and hope that a new world can be built, in which economic development, social development and environmental protection as interdependent and mutually reinforcing components of sustainable development can be realized through solidarity and cooperation within and between countries and through effective partnerships at all levels.”

United Nations City Summit Habitat Agenda (June 1996)

1. URBAN DEVELOPMENT

1.1 Sustainable Urban Development

Urban development is not only a process to create and formulate a vision for a city or town that involves the analysis of the actual situation and the prospects for economic and social development and its consequences for urban planning. More and more urban development is both a process and a product to identify ways of creating the conditions for sustainability of the city in economic, ecologic and social dimensions. The idea of the sustainability of urban development means that the present progress does not take place at the expense of future generations.

Decisions to support the sustainable development of land, as a valuable and finite resource, merit a comprehensive approach to impact assessment. Many aspects and options need to be explored to reach an appropriate, objective decision. Balancing and weighing all public and private interests is one of the most important tasks of creating an urban development plan.

1.2 Public-Private Partnerships

In previous times and according to the legal basis urban development mainly has been a task of the municipalities. In the last two decades parts of urban development more and more have been transferred to private investors, often called as public-private-partnership. Main reasons were to alleviate problems with capacity within the public sector such as problems in public budgets. One option is to involve the private sector to activate the financial resources and ideas of private investors to develop a project area.

This will only be possible where the skills and experience of the private sector have reached a level where qualified services can be provided and sustained. This should not be perceived as a threat to the public sector, especially when true partnerships are formed between the public and private sectors to share the risks and the benefits. However, the use of improved managerial skills within the public sector plays a crucial role in the success of these partnerships.

In this way, both public and private sectors can expect to achieve a more efficient mix of public and private resource allocation.

1.3 Urban Planning and its Realization

In Germany urban development plans like preliminary land-use plans and legally binding land-use plans have to be set up in a formal procedure including an intensive participation of the public. Nevertheless urban development is not only a result of creating plans but also the knowledge and experience to realize these plans. That includes also the aspects and phases of land management and the construction of public infrastructure.

2. LAND OWNERSHIP SITUATION IN URBAN PLANNING PROCESS

Many urban development plans and projects suffer in a lack of taking into consideration the land ownership situation. And many very creative plans fail or at least have a great delay because of the resistance of the landowners involved.

According to the legal basis of a country there are generally two different ways to change the land ownership situation to realize urban development plans: private methods and public activities.

Private methods for instance are

- purchase of plots or
 - plot exchange
- by notarial contracts.

Public activities are

- compulsory purchase,
- land readjustment,
- expropriation
- etc.

Private methods only can be used in a voluntary way. Public methods comprise compulsory activities, but they can be combined with voluntary elements.

2.1 Urban Development in Project Areas with only one Landowner

The easiest case is given, if there is only one landowner in the project area. The municipality can make an agreement with this landowner, in particular how to transfer the areas for public facilities (streets, parks etc.) into public ownership and how to share the costs and benefits of the development.

In Germany there is also a special way, the so called project and infrastructure plan as a special kind of project-based binding land-use plan. The project developer prepares such a project and infrastructure plan for the project site and has to negotiate a special urban contract with the municipality to regulate the obligations of both parts, particularly how and when the

project and the associated infrastructure will be realized. In those cases of transferring also the planning part to a private investor also the citizens participation and the formal decision on the plan has to be done by the local parliament like in regular urban development plans.

Another way that is used in project areas with municipal land ownership is to create a new public-private company to develop the project site sharing the costs and profits of the project.

(Project examples will be presented in lecture.)

2.2 Urban Development in Project Areas with few Landowners

If there are only few landowners in a project area, private negotiations and contracts can change the land ownership situation according to the planning scheme. This method of land purchase only succeeds if the landowners sell their plots voluntarily to the municipality or to the developer. It is also possible to find land management solutions in forms of land exchange to keep the landowners involved in the project area. If these ways succeed, there is no need for compulsory public activities.

Sometimes landowners involved deny participating in the project. Then the municipalities need instruments to force those landowners. In many countries there is a land acquisition method for project sites with different landowners. That means that the landowners can be forced to sell their land and if the negotiations fail, they can become expropriated. This only is possible in Germany, if the land is needed for public purposes. In Germany it is more common to use the so called land readjustment method (German: Umlegung), that will be explained in chapter 2.3.

(Project examples will be presented in lecture.)

2.3 Urban Development in Project Areas with many Landowners

In project areas with many land ownership-titles there usually is no chance for landowners to regulate the ownership situation for themselves by voluntary notarial contracts. In other countries the municipalities can clear the land ownership in those cases by compulsory purchase. But depending on the countries legal basis lots of difficulties can be realized in compulsory purchase such as

- objections of the landowners
- procedural problems
- unefficient regulations for land values
- intermediate finance
- political problems (depending on the power and resistance of the landowners involved)

Therefore there are lots of potential delays and risks for the urban development. Besides the discussion of land values a main problem is, that the landowners in cases of compulsory purchase usually are out of the area and out of the project.

In Germany there in general are two main development procedures for project areas with many landowners: the special urban development measure and land readjustment.

2.3.1 Special Urban Development Measure

Special urban development measure is also a way of municipal interim purchase. In the special declared urban development project the municipality can expropriate the individual landowner if he denies selling his plot(s). But the special urban development measure can only be implemented if the special requirements are given as

- the benefit of the general public,
- the aims and purposes are not capable of being achieved through the use of urban development contracts
- the swift implementation must be possible
- the development of the area must have a special importance for the municipality.

The municipality is obliged to purchase or to expropriate all plots in the project area and to dispose of those plots that are not needed for construction of public infrastructure (streets, green areas etc.). After readjustment and construction of local public infrastructure the land has to be sold to those persons who are willing to build on it in accordance with the designations of the legally binding land-use plan and the requirements of the special urban development measure within a reasonable period of time. In first instance consideration is to be given to the previous land owners (with consideration being given to broad sections of the population).

Because of the special regulations of paying only low land prices without any respect of the upcoming development, many landowners refuse this kind of urban development because they want to get a higher portion of the land value increase for themselves. That makes this instrument very unpopular. The landowners institute proceedings which can delay the development project and arise intermediate finance and project costs.

Therefore there is only very few cooperation with the landowners involved and lots of resistance and court proceedings. Therefore there are only very few special urban development measures in Germany.

(Project examples will be presented in lecture.)

2.3.2 Land Readjustment

An interesting alternative to cope with a greater number of landowners in a project area is so called “land readjustment”. It is an excellent land exchange method and case studies will illustrate that this modern type of land management realizes its goal of sustainable urban development, taking into account ecological, economic and social aspects.

In contrary to the compulsory purchase and special urban development measure, land readjustment is based on the thoughts of partnership and agreement. But in the German legal system the municipalities also have the power to force the landowners by administrative acts.

If necessary, in those cases the decisions finally will be made by the courts. The basic idea of realizing projects by land readjustment is, that landowners - if they want - will keep land ownership titles in the project area, but in another shape and location and in particular developed to be built up.

Some important characteristics of this land readjustment method are:

- Land readjustment is a land exchange method (no acquisition).
- There is a legal basis (in Germany: The Building Law Code).
- Usually the municipalities initiate the procedure by a formal decision.
- The preconditions are, that this kind of land exchange is only allowed, if private regulations are not successful.
- The land readjustment process can be started before the legally binding land-use plan has come into force.
- Public areas (streets, green, playgrounds, also schools, kindergarten) will be provided as land contribution or land decrease of the landowners involved and from all landowners equally.
- All other plots will be shaped and redistributed as building plots to the previous landowners (they keep their ownership during the whole land readjustment procedure).
- If individual landowners do not want to get building plots in the land readjustment area, they can get a monetary compensation or exchange land in a different location.
- Land readjustment has a high rate of voluntary elements.
- Most decisions will be done with the agreement of all landowners, because there is a great variety of individual solutions, taking into consideration the landowners wishes.
- With its special system of land evaluation land readjustment reaches a fair sharing of profit and risk between all landowners.
- In the same procedure the landowners will pay some recoupment of land value betterment (by money or in form of land decrease).
- The social and environmental aspects are balanced in the urban planning process, but realized in land readjustment procedure.
- Land readjustment works with an early and active participation of all landowners.
- Land readjustment can also be done private by notarial contracts but this needs an agreement of all landowners. The public way by administrative acts is in Germany more common, because it has advantages in cadastre, land register and taxes.

(Project examples will be presented in lecture.)

3. CONCLUSIONS

- Land readjustment is an elegant, economic and effective land exchange method for project areas with complicated land ownership situations, to realize urban development plans equalizing the advantages and disadvantages in an optimal way.
- By its intensive participation and cooperation between municipalities and landowners, and its great variety of possibilities taking into consideration the requirements of the landowners there usually is a high degree of acceptance.

- Therefore land readjustment is an important instrument for sustainable urban development and redevelopment achieving its economic, social and ecologic objectives.

BIOGRAPHICAL NOTES

Mr. Rainer Müller-Jökel graduated as a land surveyor from the University of Bonn, Germany with main subjects concerning land management and land evaluation. He is working for the Municipal Survey Office of Frankfurt am Main as Head of the Department of Land Readjustment.

He is Chairperson of Working Group V 'Landmanagement' in DVW (German Association of Surveyors) and German delegate to FIG Commission 8 'Spatial Planning & Development'.

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