

The Appraiser's Role in Urban Subdivision and Land Consolidation (Reparcellation) in Israel

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ABSTRACT

The real estate appraiser in Israel functions by power of the Real Estate Appraiser Law – 1962. According to this law, anyone who is not a licensed appraiser is forbidden to deal in appraising. The ministry that oversees the functions of the real estate appraiser is the Department of Justice. The Minister of Justice has established a Council of Real Estate Appraisers, which is located in Jerusalem. This Council supervises the Registry of Real Estate Appraisers, administers examinations, and grants licenses. Regulations exist for professional ethics, syllabus for examinations, rules for the required training period (apprenticeship), etc. A higher educational degree is required to become a real estate appraiser. The Appraisal Council publishes standard requirements regarding the preparation of appraisals. The Department of the Chief Valuer is a branch of the Ministry of Justice. The current number of certified appraisers in Israel is approximately 1,600. Licensed appraisers in Israel include: Engineers, land surveyors, economists, town planners, agronomists, teachers, architects, lawyers, and even several doctors. Appraisers in Israel act as experts in all matters dealing with real estate economics, serve as expert witnesses in court cases and town planning councils, and act as advisors to the Israel Land Administration, the National Planning and Building Council, planning commissions, and banks. According to the Town Planning Law of 1965, the real estate appraiser serves a special function in claims for compensation for loss of value to property due to a town plan (Paragraphs 197, 198). In case of a dispute among the parties involved, the law calls for the appointment of an independent appraiser to decide. The Arbitration Law (1968) grants real estate appraisers statutory authority in determining the Betterment Levy, 50% of the appreciation of property value resulting from a new town plan. In cases of disagreement, here too the law calls for the appointment of a real estate appraiser to decide, allowing for the possibility of a court appeal only in the case of a dispute on a legal point. The Role of the Appraiser in Reparcellation of Land According to Paragraph 121 of the Planning and Building Law, a Local Master Plan and a Detailed Town Planning Scheme may include instructions for Land Consolidation and Reparcellation to be executed by a real estate appraiser. The designated appraiser usually serves as a member of the planning team. The reparcelling occurs when there are a large number of owners in an "anachronistic" parcellation, which cannot be implemented to fit modern requirements. The job of the appraiser is to value each owner's property and be a partner in drafting a program that will guarantee the appreciation of property values and prevent claims for compensation. After the program plan has been drafted, the appraiser prepares a proposal of lot sizes, which will prevent as much as possible joint ownerships. The appraiser then appraises the value of all the tradable parcels formed by the new reparcellation, excluding land that is required for the

public domain, such as roads, schools, parks, sports and recreation facilities, and public institutions. The appraiser allots the new lots according to the relative portion of every owner. In cases where the ownership rights are small and do not allow for the allocation of a whole parcel, the appraiser attempts as much as is possible to form partnerships between relatives or according to the owners' requests. The appraiser then determines parity payments. It is the appraiser's job to attempt, where possible, to avoid such payments, which generally arouse the opposition of both sides to the plan, the payment giver and the taker. The table of parity payments is a part of the town planning scheme. Opposition to the planning scheme and the payment tables may be submitted. The planning institution has the authority to confirm the plan or to appoint an arbitrator, in accordance with the Arbitration Law (1968). The courts have sat on many cases on the subject of reparation. Recently, the courts decided on a case regarding expropriation of public land as part of reparation. The courts ruled that compensation may be paid in expropriation of land for public purposes only if, as a result of the new scheme, property value did not increase.

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1. THE APPRAISER IN ISRAEL

The real estate appraiser in Israel functions by power of the Real Estate Appraiser Law – 1962. According to this law, anyone who is not a licensed appraiser is forbidden to deal in appraising.

The ministry that oversees the functions of the real estate appraiser is the Justice ministry.

The Minister of Justice has established a Council of Real Estate Appraisers, which is located in Jerusalem. This Council supervises the Registry of Real Estate Appraisers, administers examinations, and grants licenses. Regulations exist for professional ethics, syllabus for examinations, rules for the required training period, etc. Academic degree is required. The Appraisal Council publishes standard requirements regarding the preparation of appraisals. The Chief Valuer is a branch of the Ministry of Justice.

The number of certified appraisers is approximately 1,600. Licensed appraisers include: Engineers, Surveyors, economists, town planners, agronomists, architects, lawyers, etc.

Appraisers act as experts in all matters dealing with real estate, serve as expert witnesses in court advisors to the Israel Land Administration, the National Planning and Building Council, planning commissions, and banks.

According to the Town Planning Law 1965, the real estate appraiser serves a special function in claims for compensation for loss of value due to a town plan (Paragraphs 197, 198). In case of a dispute among the parties, the law calls for the appointment of an independent appraiser to decide. The Arbitration Law (1968) grants real estate appraisers statutory authority in determining the Betterment Levy, 50% of the appreciation of property value resulting from a new town plan. In cases of disagreement, here too the law calls for the appointment of a real estate appraiser to decide, allowing for the possibility of a court appeal only on a legal point.

2. THE ROLE OF THE APPRAISER IN REPARCELLATION

According to Paragraph 121 of the Planning Law, a Local Master Plan and a Detailed Scheme may include instructions for Reparcellation to be executed by a real estate appraiser.

The designated appraiser usually serves as a member of the planning team. The reparcelling occurs when there are a large number of owners in an "anachronistic" parcellation, which cannot be implemented to fit modern requirements. The job of the appraiser is to value each

owner's property and be a partner in drafting a program that will guarantee the appreciation of property values and prevent compensation claims.

While the program plan drafted, the appraiser propose lot sizes, which will prevent as much as possible joint ownerships. The appraiser then appraises the value of all the parcels formed by the plan, excluding land that is required for the public domain, roads, schools, parks, recreation facilities, and public etc.

The appraiser allots the new lots according to the relative portion of every owner. In cases where the ownership rights are small and do not allow for the allocation of a whole parcel, the appraiser attempts as much as possible to form partnerships according to the owners' requests.

The appraiser determines parity payments. It is the appraiser's job to attempt, where possible, to avoid such payments, which generally arouse the opposition to the plan. The table of parity payments is a part of the town planning scheme.

Opposition to the planning scheme and the payment tables may be submitted. The planning institution has the authority to confirm the plan or to appoint an arbitrator, in accordance with the Arbitration Law (1968).

The courts have sat on many cases on the subject of reparcellation. Recently, the courts decided on a case regarding expropriation of public land as part of reparcellation. The high court ruled that compensation may be paid for public domain only if, as a result of the new reparcellation, property value did not increase (file 5389/09).

3. THE APPRAISER ROLE IN ISRAEL – IN PLANNING TEAM

In Israel the appraiser is an inherent part of the planning & building law proceedings, additional to his work as an appraiser for building contractors, initiators, banks, courts, and private section , R.E tax,etc.

3.1. The involvement of the Appraiser in planning & building law -1965 proceedings

The appraiser is apart of the planning team, furthermore his added value contribution takes place in:

- Feasibility studies
- Reducing damage and injury in value
- Improvement the realestate value

The appraiser services are required in many clauses in the planning and building law, as follows:

<u>Acquisition compensation Appraisal</u>	-clause 26- land acquisition
<u>Appraisal For binding and compulsory partnership</u>	clause 70
<u>Appraisal for objection to planning town planing Scheme</u>	clause 100
<u>Member in appealing committee</u>	clause 112
<u>Reparcellation and balancing</u>	clause 120-128
<u>Condemnation& compensation</u>	clause 188-196
<u>Compensation for scheme devaluation</u>	clause 197
<u>Arbitrator in planning dispute</u>	clause 198
<u>Appraisal double value penalty illegal building</u>	clause 219A
<u>Appraisal - Batterment Levy</u>	third annotation
<u>Restoration/ Preservation & compensation</u>	forth annotation

3.2 Land Readjustment

When area of the city is ripe for development, it is zoned as a "Land Readjustment" in town planning scheme.

The Readjustment is done by the land appraiser and it is a compound of planning, economics, appraisals, legal, tax, psychology and social problems.

The Appraisal is should have the qualification in all the above mentioned problems .

3.3 The planning & building

Reparcelation procedure has 9 distinguished part in the town planning law

The planning & building law has a special chapter for readjustment.

Generally speaking, the readjustment conforms with the norms and regulations implemented world wide.

Readjustment is conformed by the instructions of chapter C sign G and this are his main instructions:

Clause 121: "Combination and partition with or without consent":

A local outline scheme and a detailed scheme may also enact provisions- "

(1) on the combination of plots, both with and without their owners' consent.

(2) the reparation of plots between their owners, both into jointly owned and severally owned plots, both with and without their owners' consent (hereafter :repartition)"

Clause 122 : "Repartition without consent"

"The following special provisions shall apply to a partition for which the consent of all the owners' concerned has not been obtained:

- (1) Every allotted plot shall be as near as possible to the place where the owners' previous plot was located.
- (2) The value of the plot to be allotted shall, as far as possible, be the same proportion of the aggregate value of new plots created by the repartition, as was that of the previous plot's value to the aggregate value of all previous plots.
- (3) If it is impossible to maintain the said proportion exactly, then an allottee whose new plot has smaller relative value than his previous plot shall be entitled to have the difference paid to him by the local commission, and an allottee whose new plot has greater relative value than his previous plot shall pay the difference to the local commission.
- (4) the planning institution authorized to approve the scheme shall decide whether and to what extent the relative value of the new plot can be maintained, or the proximity to the previous plot, but the planning institution may prescribe that the decision on the rights of owners of plots included in a scheme prepared under this article shall be transferred to an arbitrator on whom the plot owners and the local commission agreed; if the plot owners and the local commission fail to agree on an arbitrator, then the chairman of the contestations committee shall appoint one in consultation with the chairman of the district commission; the arbitrator appointed, whether or not by agreement, shall set his remuneration and determine who shall pay it; he shall give reasons for his decision on the said entitlements, if the planning institution or one of the parties so required; the provisions of the arbitration law 5728-1968, subject to provisions of this section, shall apply to arbitration.
- (5) nothing in this section shall be construed to mean that a repartition scheme may deviate from the provisions of an outline scheme that is binding for the place in question"

Clause 123- " Entry of note in land registers":

When a repartition scheme has been deposited, the chairman of the planning institution that deposited the scheme shall forward a copy of it to the Land Registration Office concerned, and the Registrar of Lands shall enter a note in the Land Register beside the entry of every registered parcel likely to be affected by the scheme.

4. COURT DECISIONS

1. Over the years, many disagreements aroused through the interpretation of the law, for example:

According to clause 190(A) of planning and building law, when the expropriation is for the purpose of roads, public gardens, sport education, culture, religion and health areas, it is allowed to expropriate 40% of the original parcel without giving any compensation to the owner.

The above mentioned clause aroused a question whether in readjustment scheme it is allowed to expropriate more than 40% for public areas without compensation?

The ruling of the court in that matter is not unified, in the appeal that discussed that issue the parties reached to an agreement and there wasn't a precedent in that matter (Hartabi ruling and Procedure 2121/95 Mesika ruling).

Recently, the supreme court received a new ruling, according to, it could be understood that if the value of the new plots which are given to the owners are higher than their prior value, before the readjustment plan, there is no percentage limit for expropriation for public areas without compensation.

2. Courts didn't reach a unified decision about how to appraise the value of the existing buildings and how to value the prorata rights owners' property.

In one case the court decided that the appraiser should ignore the value of the buildings (Tuty ruling), in another court decision was that every component which gain value should be taken into account (Irani ruling).

3. The supreme court ruled (5 judges by majority vote- verdict 186/78 and 4/80, Tur ruling) that while appraising the new plots one has to ignore the designation of the plots in the new planning.

This decision was overruled by the supreme court unanimously (5063/91 Irani ruling). according to this decision the appraiser has to take into account all the valid components contribution to value, including the new designation.

4. In the above mentioned trial aroused the question whether the new plot should be located within the original parcel. the court ruled that in some cases, it is not obligated.
5. There was a legal dispute about the question whether it is possible to get building permission on the new plot before registering the plots in the Land Registration Office. The district court decided that the owner of the new plot could get the building permission. The supreme court forbided providing the permission before the registration is completed (587/77 Katzav ruling).

In order to prevent damage to the owners the Minister of Interior published new regulations in the planning and building law, accordingly, when the readjustment plan is signed by a certified surveyor it is possible to receive a building permission, prior to the registration of the new plots.

6. Courts ruled that it is the local planning committee duty and liability to collect the balance payments and to pay it to the owners which are entitled to receive it.
7. Courts ruled that readjustment that conformed with the consent of the owners is obligated to tax, as if the owners conformed mutual sales, recently due to a new amendment the tax was abolished, unless there are balance payments.

8. Supreme courts ruled that the balance payments will be appraised to the date of the new plan approval (see 218/91 Vilansky ruling).
9. Supreme courts ruled that parcelling public zone without compensation by using readjustment procedure may replace expropriation procedure which is obliged to compensation (see 483/88 Fraiman ruling, 26/70 Bar ruling)
10. In the question whether it is appropriate to take public areas without compensation in reparcellation scheme, recently the court decided as follows:

The choice is expropriation and compensation payment or execution of reparcellation scheme, which does not need public expenses, and compensation the compensation is granted to the owners, by enlarging the number of buildings percentage and heights. No wonder that planning authorities chose reparcellation alternative.

5. DISPUTES BETWEEN APPRAISERS

There are disagreements between the appraisers regarding questions about the values of the owner rights in land readjustment, for example:

1. How to value partners rights, should partnership reduce the value of parcel or plot?
2. Is the value of square meter in a small parcel is similar to square meter in a big parcel, what is the difference?
3. How to value existing building prior the readjustment, whether to value it according to building costs or according to the building value and how to translate it to prorata value in the new plan?
4. How to avoid balance payment, that arouse objections to the readjustment plan. according to the law, the owner that receive balance payment ought to pay tax, while the one that has to pay is unwilling to do so and both of them object the parcellation scheme.
5. How to value Lessee's Interest – weather he is entitle to ownership rights in the new plot prorata the value of his rights.
6. How to relate to previous Condemnations, is it possible to reconstruct the original area of the parcel and compensate the owner with higher value?
7. How to value public areas and rights owned by the authorities, prior to the readjustment, are they entitle for allotment of commercial or residencial areas as an exchange to their public parcels such as roads and green parks etc.

FIG international conference is the appropriate meeting place for exchanging ideas and finding the proper solutions to the above mentioned subjects.

BIOGRAPHICAL NOTES

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