



Compensation Rights for Decline in Land Values Due to Planning Decisions

A Cross-National Perspective

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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 be a rise or depreciation of land values— **the pendulum**
- 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 - is almost totally absent from national or international discussion or academic research
- The theoretical (intuitive) assumption that these two are two sides of the same coin is NOT supported in reality (and not even by theory)



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 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



Why is cross-national learning relevant?

- ❑ The issue is universal and raises deep philosophical, social-justice and economic issues concerning the essence of the relationship between planning and property rights
- ❑ Yet - the current state of systematic comparative knowledge is rudimentary – even neighboring countries do not exchange views and knowledge
- ❑ Each country thus debates the problem (if at all) almost in isolation and in a haphazard way
- ❑ The negative consequences of the absence of thought-out consistent policy are borne by landowners unequally (and by the property markets)
- ❑ Analytical comparison of policies may help to frame the debate in each country
- ❑ Most important: Comparative assessment can provide a SCALE for judging what is an “extreme” policy – either on the “no compensation” side or the “extensive compensation” side.
- ❑ Looking at the rationale and functioning of the various sets of laws and policies in other countries can provide some “simulation” for other countries debating a change in laws or policies

Systematic comparative research of 13 countries

- ❖ **Pre-stage: prior extensive comparative research on related topics (including “planning systems”, expropriation and betterment taxation)**
- ❖ **Stage 1 – pilot study: Delineate the “perimeter” of the different laws on extent of compensation rights**
- ❖ **Stage 2 – pilot study – identify the key variables among the different laws**
- ❖ **Development of a comparative analytical framework and questions**
- ❖ **Create a 13-country team of expert researchers – 1 person or team for each country**
- ❖ **Ask the authors to describe and evaluate their law and practice based on the framework and questions**
- ❖ **Several rounds of calibration of terms and concepts**
- ❖ **Comparative analysis and evaluation**
- ❖ **Identification of possibly transferable lessons**

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 compensation-rights span of policies

No compensation rights except for physical expropriation

Extensive compensation rights

← A broad range of interim positions →



Key findings

- There is a great variety of laws and practices among the countries (and within single countries)
- There are MAJOR DIFFERENCES among countries
- There are major differences among European countries, including EU member countries, in both law and practice, 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

Can you guess where each country would be positioned along the scale range?

Arranged temporarily by geographic regions

Let's give scores: 1 – low level of rights 5 – generous compensation right

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

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.

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