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Public land development as a strategic tool for redevelopment: Reflections on the Dutch experience

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ABSTRACT

For many decades cities in the Netherlands have made extensive use of public land development as a strategic tool for pro-active planning. This paper investigates the Dutch experience to explore its utility both in the Netherlands and in the U.S. We build upon an earlier study by Lefcoe (1977) with similar purposes. His conclusion was that American cities should be cautious in the use of this approach. This paper comes to the same conclusion, but does so taking into account the present institutional contexts and market circumstances both in the Netherlands and the U.S. It is argued that only under very specific circumstances does it make sense for municipalities to act as land developers. Furthermore, the Dutch experience with public land development since the 1990s demonstrates the many dangers there can be to this land development strategy.

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Introduction

As it is applied by Dutch cities a public land development strategy, involves public purchase, ownership and servicing of land and active planning for land use before land is released for actual development to the private sector. This guarantees building developments according to public policies, it realizes full cost recovery of all public works via the sale of building plots and it captures at least part of the surplus value of the land (after a change in use). In this paper we argue that a public land development strategy should be distinguished from the internationally more common strategy of public landbanking. Public landbanking involves land assembly by the public sector and the sale of unserviced land to the private sector. Where the Dutch see public land development as a way to implement a local-authority-driven development program for a whole city, American and other cities around the world make use of landbanking strategies to acquire properties mainly on brownfield locations to enable a (re)development program for that specific area. In addition to these two development models two alternative strategies can be distinguished as well, i.e. private land development strategies and urban land readjustment strategies (see “Alternative land development models” section).

This paper investigates planning practice in the Netherlands, a country in which public land development is at the core of the municipalities’ strategies to achieve their planning goals. Dutch local governments have always played an active role in acquiring agricultural land, servicing that land for future building and supplying it to home builders and other users. The main reason that they have adopted this role is that ‘they want to steer development in a pro-active way and that they want to earn money to finance the costs of public works like streets, sewage systems and public space that are necessary for new urban development’ (Needham, 2007, p. 181). The model is applied to both greenfield development and urban transformation (brownfield) projects and requires strategic land acquisitions, often many years prior to the implementation of a new plan for development. The development strategy supports, when successful, a very pro-active way of planning. Though other land development models are applied as well, i.e. public landbanking strategies and private development, public land development still is the dominant development strategy for Dutch cities.

The aim of this paper is to explore the continued utility of the public land development model in the Netherlands, in the present institutional context and under present market circumstances, and its utility in the U.S., as a possible alternative to current planning practice in American cities and as a strategy to plan in a more positive way. Doing this, we reference an earlier study by Lefcoe (1977). He believed – as others did as well (see below) – that local authorities in the United States did not hold effective tools to implement their urban development plans. From a European perspective planning in American cities is quite passive. The most common land use tool in the U.S. – zoning – is in essence negative. Though American

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cities – primarily in the case of urban transformation projects – make use of public landbanking as well, they do this in a different way and certainly less frequently than the Dutch do. In comparing American planning and urban redevelopment practice with the Dutch experience it is necessary to acknowledge some fundamental differences between the two countries. Compared to Dutch cities (and most other European cities), American cities hold a relatively weak position vis-à-vis land use planning and implementation (Kushner, 1993; Cullingworth, 1994). In addition, land is and always has been quite scarce in the Netherlands, thus land prices in the Netherlands are quite high compared to those in and around most American cities. In both the U.S. and the Netherlands, the global economic crisis has significantly affected planning, development and redevelopment, though more so in the U.S. as a result of the structure of housing finance in the 2000–2006 time period.

Lefcoe was not the first to either critique the limitations of zoning as a land use approach, or to explore northern European and Scandinavian alternatives – especially public land development – as an alternative to zoning. A decade earlier, in the 1960s, Reps (1964), Babcock (1966) and Delafons (1969) all contributed to an emerging consensus in the planning field about zoning's limitations. Reps (1964, p. 56) famously noted "Zoning is seriously ill and ... what is called for is legal euthanasia, a respectful requiem ...". As he was burying zoning, and then later in fuller exposition, Reps explicitly called for planners to advocate for public land development as a way to achieve what we would today term sustainable urban development (Reps, 1964). With this recommendation Reps was both following in a strong tradition and contributing to the further development of the idea that American planners should look across the Atlantic for viable urban development and redevelopment models, particularly that of public land development (Buttenheim, 1939; Strong, 1979).

As we will discuss more closely in "Public land development in the Netherlands and elsewhere" section, Lefcoe (1977) came to the conclusion that it would not be a wise decision for American cities to enter the land development business in the way Dutch cities do. We add to his conclusion by noting that his advice to American cities not to use the instrument can also be read – though perhaps not intended by Lefcoe – as a critique on the Dutch (and some other countries) who so frequently make use of the strategy. What we argue below is that it is striking that some of the dangers of public land development as predicted by Lefcoe actually came about in the 1990s when market circumstances in the Dutch land and housing market changed and again after 2008, when Dutch municipalities started to severely suffer the consequences of global depression and economic downturn ("Public land development in the Netherlands and elsewhere" section). Though some of the gaps in law that have contributed to the 1990s reality for Dutch municipalities have been repaired by introducing new land market regulation in the new Dutch Spatial Planning Act (TK, 2008), in fact another set of reasons have come forward that may bring Dutch cities to reconsider their traditional role in the land market.

This paper assesses the public land development model as it is used in the Netherlands, in the context of the developments that have taken place in Dutch local land markets since the 1990s. Lefcoe's argument that American cities should look for instruments that would give them the opportunity to play a more pro-active role in achieving their planning goals still seems to be valid. More recently, other authors have also criticized zoning as a mainly negative instrument, which has little relationship with stated public policy goals and ties the hands of municipal governments in pursuing a more active agenda (Beatley, 2000; Levine, 2006; Hall, 2007; Hirt, 2007). We believe, however, that the developments that took place in Dutch local land markets may yield wise lessons for local governments in the United States about embracing a public land

development strategy. Only very specific circumstances may justify such a strategy.

The structure of the paper is as follows. "Alternative land development models" section starts with a brief discussion of different land development models in an international context. "Public land development in the Netherlands and elsewhere" section discusses public land development in the Netherlands: its background, goals and achievements until the 1990s. "Lefcoe's analysis of the Dutch experience with public land development" section reviews Lefcoe's analysis of the Dutch experience with public land development and its potential use for American cities, referring to a situation that lasted until the 1990s. "What happened on the Dutch land market since the 1990s" section describes the developments on the land market in the Netherlands since the 1990s and the changing roles of municipalities and private actors in this market and evaluates the effectiveness of public land development as a planning strategy. Starting from a discussion of the motives for a more pro-active role for American local planning authorities, "Concluding remarks" section critically assesses the advantages and disadvantages of this development strategy for American cities. We conclude with a challenge to the planning community.

Alternative land development models

Land development models (or: land management strategies) usually serve three main objectives. First, in the case of a desired development, land must be made available for development. Often this requires a form of land assembly, since the required subdivision for the new development (e.g. a new residential or mixed-use development) does not match up with the existing ownership structure (e.g., in the case of an urban transformation project, an obsolete industrial area). Land assembly can be interpreted as a transfer from passive to active land ownership. Active landowners are those who are willing to develop their land, while passive landowners take no particular steps to market or develop their land (Louw, 2008, p. 70). Moreover, the assembly of plots usually offers a more efficient and more profitable development opportunity. A second main objective is to make sure that the costs of the public works that are necessary for the intended development can be recovered, either completely or at least in part. The primary condition for this is a positive balance between the increment value of the land based on the new development and the costs to develop the location. The third main objective – however much less 'accepted' and in many countries subject of political debate (Alterman, 2009) – is to capture part of the unearned increment in the land value that occurs as a result of the change of the land use in the area to be developed, thus allowing higher valued uses or higher building densities.

To achieve those goals different land development models can be applied. Those development models vary by the main purpose of the strategy and its relation to planning, land assembly strategy, and cost recovery and value capturing strategy (Table 1). It is useful for the purpose of this paper to distinguish land assembly models and land readjustment models. Land assembly can both be done by public authorities and by private developers (and also in public private partnerships). For public authorities there are different ways to assemble land. Following Golland (2003; cited in Louw, 2008, p. 73) we distinguish comprehensive top-down models and planning-led quasi market models. The *comprehensive top-down models* concern a pro-active plan-led city-wide approach and involve the public purchase and development of all (future) building land within a city, to guarantee building developments according to public policies, to realize full cost recovery of all public works via the sale of building plots and to capture at least part of the surplus value of the land (after a change in use), to use that for public use.

Table 1
Alternative land development models: main purpose, land assembly, cost recovery and value capturing.

| Land development models | Definition | Main purpose and relation to planning | Land assembly | Cost recovery and value capturing |
|--|--|--|---|--|
| <i>Land assembly models</i> | | | | |
| Public comprehensive top-down model | Public purchase and development of land, in order to guarantee building developments according to public policies, to realize full cost recovery of all public works via the sale of building plots and to capture part of the surplus value of the land | To implement a local-authority-driven development program for a whole city, in close relation to city-wide comprehensive public planning goals | Public body acquires all land within a city that is needed for (future) development, services that land and re parcels it into building plots that suit the planned development | Cost recovery and value capturing via the sale of building plots |
| Public planning-led quasi market model | Public purchase of land (and vacant properties) in a specific area and subsequent sale of that land to the private sector, in order to enable a (re)development program for that specific area | To achieve a (re)development program for a specific area, sometimes in relation to a city's smart growth or brownfield agenda | Public body acquires the land that is needed for the (future) development of a certain area | Cost recovery via developer contributions (when building permit is issued); no value capturing by public authorities |
| Private market model | Private purchase of land (and vacant properties) in a specific area, in order to enable a (re)development program for that specific area | To achieve a (re)development program for a specific area, in accordance with zoning regulation for that area | Private sector company acquires land to achieve their own development plans | Cost recovery via developer contributions (when building permit is issued); no value capturing by public authorities |
| <i>Land readjustment models</i> | | | | |
| Urban land readjustment model | Owners of land and property in a designated area transfer voluntarily their property rights over land and property temporarily to a self-governing body. After re parceling the land into suitable building plots, the original owners are again assigned property rights over land and property in the development area, proportional to their original share | To achieve a (re)development program for a specific area, sometimes in relation to a city's smart growth or brownfield agenda | Temporary transfer of land rights to a self-governing body for redevelopment | Cost recovery via a contribution by the self-governing body for redevelopment (when building permit is issued); no value capturing by public authorities |

In contrast, *planning-led quasi market models* operate a proactive plan-led area approach, involving the public purchase of land (and vacant properties) in a specific area and afterwards sale of that land to the private sector, in order to enable a (re)development program for that specific area. Often, semi-public development companies are established that are allowed to operate outside the normal local planning rules. Planning-led quasi market models, as we see them, aim to acquire land in a certain area to guarantee the (future) redevelopment of that area. Cost recovery of public works investments is usually arranged in a later stage of the development, when building permits are issued, via some kind of developer contribution. Value capturing is usually not a goal.

Private market models relate to a much more passive planning approach in which zoning is the usual tool to prohibit certain development forms taking place. It involves the private purchase of land (and vacant properties) in a specific area, in order to enable a (re)development program for that specific area.

In addition to the public and private land development models we also distinguish urban land readjustment models. *Urban land readjustment models* (also referred to as 'land pooling' and 'urban partnership zones'; see Adams et al., 2001) can be described as follows: 'land readjustment gives all affected property owners in a redevelopment district the power, by majority vote, to approve or disapprove the transfer of land rights to a self-governing body for redevelopment. Instead of buying out all existing property owners or using eminent domain, the agency invites property owners to become stakeholders and to contribute their real assets to the project as investment capital. (...) After all properties in the districts are assembled, the combined land sites are resubdivided (...)' (Hong and Needham, 2007, p. XV). This development model is widely applied in countries like France, Germany, Israel, Japan, South Korea and Taiwan (Doebele, 1982, 2002). Hong and Needham report that several attempts to introduce land readjustment legislation to the United States (i.e. Liebmman, 1998) have not been very successful. Though the Netherlands have a lot of experience with agricultural land readjustment, there is no legal basis

yet for urban land readjustment (van der Krabben and Needham, 2008).

For this paper we primarily discuss the pros and cons of a public comprehensive top-down model as opposed to public planning-led quasi market models and private market models. As discussed in the next section, the Dutch public land development model is typically an example of a comprehensive top-down model. In the United States, private land development is the dominant development model, but particularly with regard to urban regeneration projects public landbanking takes place as well. The latter type of public land development is, however, quite different from the Dutch approach and can instead be considered as an example of a public planning-led quasi market model.

Public land development in the Netherlands and elsewhere

The Dutch public land development model, one of the few examples worldwide of the comprehensive top-down land development model, encompasses a public developer – usually the municipality, though in the Netherlands the provincial and national government may serve this role as well – who buys all the land to be developed, readjusts the parcels into forms suitable for the desired development often many years prior to the implementation of the plan in a certain location, and sells those parcels. The income from the land development comes from selling the building plots (Needham and Verhage, 1998; Needham, 2007; Groetelaars, 2004; van der Krabben and Needham, 2008). Dutch municipalities have always felt responsible for the development of land. The earliest public initiatives started with the large land drainage projects hundreds of years ago (Needham, 2007). However, the 'modern' public land development model came into practice after World War II, when there was a huge demand for new housing and also land for industrial use. To assure that sufficient land would be available municipalities took up the task themselves.

It is possible that private land developers or large building construction firms could have taken over the land development role – legally municipalities do not have a monopoly position on the land market – but the situation remained as it was for a long time for several reasons. First is the municipalities' quest for control. Municipalities wanted to have guarantees that their land-use plans would be implemented in the way they envisioned them (the pro-active planning argument). Based on the former Spatial Planning Act, municipalities could in their land-use plans allocate land for a certain use (i.e. housing), but they were not able to distinguish between different types of housing, i.e. social housing versus owner occupied housing. However, the land owning municipalities could sell the building land to selected buyers for specific purposes. So, for example, housing associations (public housing authorities) could be targeted to take up the task of land ownership for the purpose of building large amounts of social housing. The Spatial Planning Act implemented in 2008 changed this situation by introducing the possibility of defining specific housing types in a land-use plan, making it no longer necessary for municipalities to own land to realize their housing goals.

Second, the public investments in land ownership in the Netherlands are facilitated by the current financial system, allowing municipalities to borrow money from banks for this purpose. A special purpose bank for municipalities (*Bank Nederlandse Gemeenten*) offers attractive low interest loans for municipalities, making it relatively easy for them to finance their activities on the land market.

Third, the public land development model offered municipalities financial benefits. It gave them the opportunity to recoup all the costs of their investments in the public investments that were necessary for the development, by making sure that the selling prices of the building sites generated sufficient income to cover all their costs. Those public works often included inexpensive land for uses such as social housing, schools and public parks. In many instances, municipalities were able to make a profit from land development. Those profits were used again to invest in new, less-profitable projects. In situations where the financial outcome of land development appeared to be negative, municipalities could always adjust the plan (higher densities, less social housing) to improve the financial situation. Whether this was good planning was something else!

Value capturing has always been part of Dutch land management strategies. Municipalities try to make profits out of land development (in addition to full cost recovery). They use those profits to subsidize less profitable development projects elsewhere or even use the income for other financial obligations. Nobody knows exactly how much money municipalities actually make from land development. Korthals Altes (2008) showed that on average municipalities used to make a lot of money out of land development.¹ However, the situation changed significantly after 2008 when the impact of the financial crisis and the economic recession started to effect the demand for building plots. Many Dutch cities are now losing a lot of money with public land development.²

Finally, most private developers appreciated the land development role of the municipalities. Public land development guaranteed them good-quality locations to build on – if necessary, municipalities would make use of their eminent domain powers

and pre-emption rights to assemble all land that was necessary – and the private developers primarily earned their money with the building of new homes (and not with developing land).

Land market conditions until the 1990s

To understand better why all stakeholders in land and property development have been more or less pleased with the public land development in the Netherlands, it is necessary to take a closer look at the conditions under which public land development took place until the early 1990s. First, the public land development model does not mean that municipalities held a monopoly on land development. However, most homebuilders were not interested in land development, because the costs of making the land available and servicing it was too high. In the Netherlands in particular the costs of land drainage investments were often substantial. Municipalities because of economies of scale were able to carry out these works on a large scale, which made the costs acceptable for them.

Second, the Compulsory Purchase Act (*Ontheffingswet*) allows municipalities to use eminent domain powers 'in the interests of spatial planning and housing' to implement a land use plan. The owner's disagreement with the contents of a land use plan would not help very much in an appeal relative to compulsory purchase. Compensation is paid based on the real value of the property (the price in a free market transaction). In practice, though, municipalities rarely have to use eminent domain powers (Buitelaar, 2010). Hold-out problems do not occur very often. It seems that the relatively strong eminent domain powers help municipalities to carry out their land development strategies: landowners sell voluntarily because they know that they will be expropriated otherwise. There is however one specific situation in which compulsory purchase is not possible: when the owner can claim that he is able to carry out the development himself. In the 1990s private developers began to successfully make use of this right (see "What happened on the Dutch land market since the 1990s" section).

Third, for a long time municipalities have been able to acquire (agricultural) land for residential or industrial use relatively cheaply, for a cost that is just above the price of land in agricultural use (without making use of eminent domain). One reason was the still rather low level of real market value of land, because of the large share of affordable housing ('social housing') in house building construction. Another reason was that landowners (farmers) accepted those prices as reasonable; they were probably unaware of the real market or residual value of their properties and did not try – at that time – to raise selling prices based on hope values (Needham, 1997, 2007).

And fourth, most municipalities were not very aware of the full market value of the building sites that they sold to homebuilders (Needham, 1997, 2007). Usually, they sold the building sites against cost price (the total costs of acquiring and servicing the land), in effect giving away part of the market value to the homebuilders. In a way, building land was considered to be analogous to other public utilities like roads, sewage systems and energy provision. Until the 1990s, however, the difference between cost price and market value of the building sites was in most cases rather small.

Public land development elsewhere

Comprehensive top-down public land development is not an exclusively Dutch phenomenon. Other countries, including France, Sweden, Finland and a few cities in Canada, also make use of this practice (Reps, 1964; Golland, 2003; Alterman, 2009; and see also Strong, 1979; Hall, 1976; Ratcliffe, 1976; Bryant, 1972; Atmer, 1987; Laanly and Renard, 1990; Needham, 2007; all cited in Alterman, 2009). It seems, however, that this practice in other countries has not attracted the same attention from academics as

¹ For example, in 2005, 12% of local government income came from land development revenues (Korthals Altes, 2008; cited in Buitelaar, 2010).

² A recent report by Deloitte Real Estate Advisory shows that all Dutch municipalities together might lose over € 3.0 billion on public land development, because the demand for building land has dropped as a result of the economic recession (Deloitte Real Estate Advisory, 2011). The report expects that around 10% of all Dutch municipalities may go bankrupt, because they will not be able to earn back their investments in land development.

has the Netherlands experience, probably because in those countries the strategy is not as dominant as in the Netherlands and because public land development has not encountered the same problems as in the Netherlands.

In the United States, many examples can be found of public involvement with the land market as well, in a way that we have described above as a public plan-led quasi market model. Usually, public land development in the United States is related to urban redevelopment projects (Sagalyn, 2007, p. 159). Land banking in the United States concerns acquiring development land ahead of need, holding those properties for a certain period of time and then selling them to the private sector. Cost recovery usually takes place in a later state of the development, when issuing building permits, via some sort of developer contribution: conditional to the approval of a building permit request the local authorities negotiate a contribution from the developer to the plan, either financially or through the provision of specific public works. Alexander (2005) mentions that public land banks have existed for a long time in the United States, and are used now in various urban areas, including St. Louis, Missouri, Cleveland, Louisville, Atlanta and Flint, Michigan. Fishman and Gross, 1972; cited in Alexander, 2005) see land banks as 'public bodies which, by acquiring land in the path of anticipated urban expansion and keeping it free from premature development, can effectively control the pace and direction of growth'. Those public bodies are typical examples of the development companies allowed to operate outside the normal planning rules, to which we referred in the previous section in relation to the 'planning-led quasi market models'. Although land banks differ in the kinds of property they hold depending on the laws governing them and the policies of the jurisdictions that establish them, land banks usually have in common a focus on vacant properties and/or abandoned properties, i.e. properties where the owners have walked away and which are usually delinquent in property taxes. Van Der Veen (2009) shows, in a comparative study of urban regeneration projects in New York, London and Amsterdam, examples of U.S.-style public land development schemes in New York. In contrast, Howland's work has shown that the redevelopment of brownfields often occurs without much government role (Howland, 2003, 2010).

The most extensively discussed public involvement concerns the states' eminent domain powers. As in the Netherlands, U.S. governments have the legal authority to expropriate land. Under the U.S. Constitution, the U.S. states have substantial authority over land use planning, land development and expropriation activities. Eminent domain is governed by both national and state constitutional provisions. Under the Court's interpretation of the U.S. Constitution, expropriation is to be for a "public use." What this means has been subject to varying legal and political interpretations since the eighteenth century (Jacobs, 2008). Since the 1950s, U.S. local governments have been able to expropriate for urban development purposes, though almost always with controversy: '(r)elying on the process of eminent domain to assemble land has been the stalwart convention of urban renewal as practiced in the United States during the decades following World War II' (Sagalyn, 2007, p. 159) In 2005 the U.S. Supreme Court's *Kelo* case reinvigorated public and public policy controversy because of the question of whether expropriation of private land to transfer this land to another private owner constituted a public use. The U.S. Supreme Court decided it did, because certain conditions had been met. Among the most important of these conditions was the fact that Connecticut's and New London's action fit within the broad guidelines established by the Court in 1954 for eminent domain actions, *Berman v. Parker* (348 U.S. 26, 1954), and as importantly New London's action was undertaken subject to a specific Connecticut law developed for such activities, and New London was careful to follow all the requirements of this law (Jacobs and Bassett, 2010, 2011).

Alternative public interventions in the land market for urban redevelopment – fitting in the public plan-led quasi market model – can be found as well. Some of those interventions concern limitations to the use of land. Apart from 'regular' zoning ordinances, there are for instance inclusionary zoning programs: 'land use regulations that require developers of market-rate residential development to set aside a small portion of their units, usually between 10% and 20%, for households unable to afford housing in the open market' (Calavita and Mallach, 2009, p. 15). Alternative planning tools that are used by American cities and that support a more pro-active planning approach include incentive zoning, exactions, impact fees and development agreements.

Lefcoe's analysis of the Dutch experience with public land development

The context of planning and urban development in the United States is very different from what some have called – with only slight exaggeration – the Dutch planners' paradise or planners' oasis (Alterman, 1997; Bontje, 2003). In the Dutch 'paradise' proactive planning – supported by the public land development model – has been accepted as a powerful and effective way of realizing planning ambitions. In the United States, in the 1960s two U.S. Presidential commissions recommended that local governments emulate international experiences by 'land banking'.³ Both commissions advised that 'local governments could become subdividers (...) and might use the profits of suburbanization to offset the costs of new roads, parks, and schools, and even to subsidize suburban housing for low-income families' (Lefcoe, 1977, p. 170): in other words, they recommended the introduction of a public land strategy based on the 'comprehensive top-down model'. Additionally, some homebuilders at that time called for public-sector land development as well (Eichler and Kaplan, 1967; cited in Lefcoe, 1977). Lefcoe comments that those homebuilders saw governments becoming land developers as a way of freeing homebuilders from the increasing pressure of stringent planning controls and high land prices. He argued that, because land is in short and relatively fixed supply, 'landowners often enjoys a near-monopoly position *vis-à-vis* the private land developer and the homebuilder' (Lefcoe, 1977, p. 170).

Lefcoe (1977) divides the argument for and against governments as land developers into several parts. The first argument concerns the cost recovery for public works (see "Alternative land development models" section). Apart from the possibility for local governments to recoup the costs of their investments by selling building plots for prices that cover all their purchase and infrastructure investment costs, governmental land development also reduces the incentive for private landowners to distort public decisions about what types of public works are to be built and where they are to be located. Lefcoe's *contra* argument is that when public land developers do a poor job, they might lose money, by, for example, buying the wrong land at the wrong time for too high a price.

A second argument is related to the local governments' desire to achieve their planning goals, particularly in respect to urban containment policies and building in high densities. The argument is based on the assumption that development according to the planning goals is likely to be less profitable than alternative, privately defined, developments. Situations may occur in which it is profitable for landowners to delay developments despite a clear consumer demand. A shortage of available building land may lead

³ Respectively, the National Commission on Urban Problems, *Building the American City* 243 (1968) and the President's Committee on Urban Housing, *A Decent Home* 143 (1968) (both cited in Lefcoe, 1977).

to an increase of property prices which will give the landowner a better price. In addition via zoning local governments have no powers to require private owners to develop their land in the way local governments would like them to do. When the local government owns the land, it can add planning goals-related conditions to the sales contract with the property developer. It means that in those countries where governments are land developers, the best vacant sites are not always used for its most profitable use. Lefcoe's counter argument is that it is not only private developers who will prefer the most profitable use of the land and refuse to develop according to the planning goals, but that local governments might act in this way also. There is no guarantee that local governments will *not* try to earn money with land development, by developing the land in a way that is not in line with the supra-local public interest. Moreover, public land developers can make mistakes in forecasting the need for building sites, which can also lead to either shortages or oversupply of available building land and undesired increases of property prices. Finally, public land development does not guarantee that property development takes place. The interest of the private sector in buying building plots for housing, retail and office space, and industrial uses depends to a large extent on market demand and may be delayed in poor market conditions.

Lefcoe's assessment of the Dutch public land development model

In addition to his general discussion of the pros and cons of public sector land development, Lefcoe analyzed the characteristic aspects of the Dutch public land development model. While not aiming to give a full assessment of the Dutch model, he nevertheless poses a number of interesting questions about the model. The first question concerns the tools of local governments to achieve public land development goals. Lefcoe's basic argument is that if a country prefers public land development for whatever reason, then governments should have the appropriate powers to act in that way. In other words, to make proper use of the public land development model municipalities should have a monopoly over all land development. In the Netherlands local governments act as public land developers, but private developers are not restricted from doing so as well. In Lefcoe's opinion, there is no reason to think, without such a monopoly, that governments could succeed in achieving their goals. They might lose to competition from private developers who are willing to pay a higher price for agricultural land. Additionally, he argues that governments should be able to make use of eminent domain powers against present use values supporting public land development, instead of allowing land owners to be expropriated against full market values, including a certain amount of 'hope' value, as is the case in the Netherlands.⁴

The second issue with respect to Dutch land development practice is related to what is called in the Netherlands the 'two-hats dilemma' (dubbele petten problematiek). Needham (2007, p. 184) explains it as follows: 'the municipality wears the hat of a statutory planning agency which is supposed to enact approved planning policy; and it wears the hat of a land developer who has invested huge amounts in the location'. The dilemma for the municipality is that certain decisions with respect to land use may be good for achieving planning goals, but have a negative effect on the returns of their land development practice. The real problem, of course,

occurs when a municipality makes a decision that is good for development profit but bad for planning. Lefcoe also warns about the latter situation, expecting municipalities to choose for profit maximization.

Third, Lefcoe questions the effectiveness of public land development as a mechanism to recoup the costs of public works. He argues that taxation seems a far better way to do so. The government can tax without putting public money at risk in the land market. For American local governments tax benefits in the form of incentives, tax-exempt financing and tax-advantage zones are some of the incentives used for stimulating brownfield development (Minkus, 2007, p. 291). Tax increment financing (TIF), anticipating future increases in local tax income, now seems to have become a highly popular economic development finance tool (Briffault, 2010).⁵ A TIF bond, when established, is repaid with the increment in the taxes on the land value that is expected as a result of the (re)development activities.

Fourth, the Dutch way of public land development entails considerable financial risks (see also Needham, 2007, p. 182). Municipalities sometimes invest hundreds of millions of Euros, anticipating to be able to recoup these costs by selling the land in the future. In the past Dutch municipalities have been able to make money, but there are many examples of municipalities that also lost a lot of money through public land development. In the second half of the 1970s, many municipalities invested in acquiring land for future industrial park development. When the economic crisis of the early 1980s caused a reduction of the demand for industrial land, some of those municipalities lost substantial amounts of money because of the interest charges they had to pay (Needham, 2007). This history is repeated now, when building plots for residential development remain unsold due to economic downturn and the drop in demand for housing.

And finally – though it can be considered both as negative and positive – the public land development model leads to a large degree of uniformity in Dutch urban developments. Dutch residential areas are often uniform in appearance, because municipalities copy the design of these areas from each other.

What happened on the Dutch land market since the 1990s

At the time that Lefcoe published his paper, his doubts with respect to Dutch public land development were not broadly acknowledged or discussed in the Netherlands. Dutch municipalities continued to make use of public land development as a planning tool. However, the conditions under which this took place began to change dramatically in the early 1990s. As a result, the relevancy of Lefcoe's early doubts has increased substantially. To explain the developments in the Dutch land market it is useful to distinguish between the land market for suburban greenfield development ("The land market for suburban greenfield development" section) and the land market for downtown urban redevelopment ("The land market for downtown urban redevelopment" section).

The land market for suburban greenfield development

Until the early 1990s public land development remained the common development model for residential suburban development. However, around 1994, the situation quite suddenly changed. The changes on the land market since that time have been analyzed and described quite extensively, because it came as a shock to Dutch planners (Nooteboom and Needham, 1995; De Greef, 1997; Korthals Altes and De Graaf, 1998; Verhage, 2003;

⁴ Remarkably, at the time that Lefcoe published his article the Dutch Cabinet had to resign, because the coalition partners were not able to agree on a new draft expropriation law. The PvdA (Labour Party) wanted to introduce 'present value' as compensation value for expropriation, instead of 'fair market value', but the CDA (Christian Democrats) did not agree. The expropriation law was not changed with respect to this issue and land owners still receive fair market value as compensation for expropriation.

⁵ However, see Weber (2010) for a very critical review of the use of TIF's by the city of Chicago.

Priemus and Louw, 2003; Groetelaars, 2004; Needham, 2007). First, a strong increase in the demand for owner occupied housing took place, as a result of the combination of low interest rates, very accessible mortgage conditions, a large growth in the number of households and delayed demand. This resulted not only in the strong growth of housing prices, because of a delayed response by the supply side, but it also made this sector much more interesting for the homebuilding industry. Because of the increase in housing prices, the value of building land increased greatly as well. Commercial developers became, for the first time, interested in strategically acquiring future building land: '(t)he development gain to be enjoyed by buying unserviced land became big enough to compensate for the risks' (Needham, 2007, p. 193).

Those developments were in fact initiated by the national government's new national policy document on spatial planning (VINEX: VROM, 1992) that restricted future housebuilding to a number of designated locations close to all major cities (the so-called VINEX locations). One of the intentions of that policy was to create deliberately a scarcity of housing land. As a consequence, it was expected that the price would increase, so municipalities would be able to make a greater profit on the land development, enabling them to pay for servicing of a higher quality (Needham, 2007, p. 193). Quite unexpectedly, but perhaps not so surprisingly in retrospect, commercial developers took advantage of this opportunity and actively started to acquire land in the VINEX locations.

In this new situation, both municipalities and commercial developers still preferred an integrated 'area-based' development of the VINEX locations, instead of a 'project-based' development led by landownership of the commercial developers. As a result, a new pro-active development model came into existence, with full approval of both the public authorities and the private sector: the so-called *building claim model*. On most VINEX locations, commercial developers agreed to sell their recently acquired undeveloped land to the municipality, against a price more or less similar to their costs in acquiring it. The municipalities continued with their role as public land developers and sold, after servicing the land, building sites against full market value to the same commercial developers. The full market value – for the Dutch this means the value of land in its new use – enabled municipalities to maintain a high plan quality. What had changed, however, was that the commercial developers had sold their undeveloped land to the municipalities under the condition of a building claim: they successfully claimed the right to build owner-occupied housing in the VINEX location. The size of that right – the number of houses that they would be allowed to build – depended on the amount of land that they sold to the municipality. The strong and continuing increase of housing prices, combined with the high plan quality, guaranteed for them huge profits on house building.

Since the 1990s the VINEX developments have been the location of the major part of all residential development in the Netherlands. That this is so has led to completely changed conditions in the land market. First, the bargaining position of municipalities with respect to commercial developers was bad. Municipalities could not make use of their eminent domain powers in the case of commercial developers holding land, because developers could successfully claim to be able to carry out the development themselves. Moreover, when a commercial developer wanted to develop its land in the VINEX location privately and did not agree to contribute to the costs of public works – those commercial developers were called *free riders* – a legal basis for cost recovery of the public works in the remaining part of the location was missing. In practice, it meant that many commercial developers were able to get the most out of their building claim. Second, the building claim model prevents a competitive market for building sites, which was of course the intention of the landholding commercial developers. And third,

the developments since 1994 have led to an increased 'awareness' of the value of landed property, on the part of agricultural landowners, commercial developers and municipalities. As a result, the costs of acquiring agricultural land for residential development have increased sharply (Luijt et al., 2003), at the same time reducing the profitability of public land development and the resources for municipalities to invest in plan quality.

To improve the position of the municipalities in the land market, in 2008 a new Spatial Planning Act was adopted (Minvrom, 1992). The new Spatial Planning Act contains a new legal basis for cost recovery of public works, even if the municipality is not holding the land. And it gives municipalities better options to guide development, including the option to include social or affordable housing in land-use plans. The latter implies that a municipality may force landholding private developers to include affordable housing development in their development plans. This new Act came, however, almost 15 years after the first changes in land market conditions took place, while most of the VINEX locations have now been developed or are under development based on public private partnership agreements that cannot be changed anymore.⁶ Those legal changes have nevertheless improved the bargaining position of municipalities relative to commercial developers, but do not appear to have changed planning and development practice (Buitelaar et al., 2010). These new statutory powers of municipalities give them the possibility to achieve planning goals without making use of a public land development strategy. However, most municipalities continue to make use of a public land development strategy, despite the financial risks and the continuing negative impact on the competitiveness of the land market, mainly because they want to keep strong control over developments (Buitelaar et al., 2010).

The land market for downtown urban redevelopment

While the implementation of the Spatial Planning Act may have improved the effectiveness of public land development for residential greenfield developments, new problems have appeared in urban redevelopment projects. Now that many of the Dutch cities have shifted their attention from residential greenfield development to targeting a substantial part of housing production in urban redevelopment areas,⁷ they are facing again difficulties with executing public land development strategies. However, these difficulties are of a different order than the problems with greenfield developments (van der Krabben and Needham, 2008). First, the possibilities for cost recovery are limited in urban redevelopment projects, because of the high prices municipalities must often pay for properties. Second, municipalities lack legal powers to make property owners that benefit from the redevelopment contribute to the redevelopment costs (free rider problem). If a property owner can benefit from the redevelopment without having to contribute financially, he will try to remain outside the process. Third, if there is fragmented ownership, it can take a long time to acquire all the properties. In some of the larger redevelopment projects the land is owned by more than 300 different companies and individuals. And if there are just a few powerful owners, they have a strong bargaining position. Fourth, acquiring land for future development is risky, particularly when the development process takes a long time. Usually, the municipality must carry out the works for servicing the

⁶ The renewing of the former Spatial Planning Act served more purposes. A more comprehensive discussion of this act is, however, beyond the scope of this paper (see De Wolff, 2007; Needham, 2007).

⁷ In 2004, the Dutch Government set a target that 25–40% of all residential development should take place within the existing built-up area. Buitelaar et al. (2008) show that most cities succeeded in achieving this target, with some even above 40%.

land for the whole location at once. This means that it has to finance both the purchase of the land and the servicing costs, without being sure about the returns on the investment. Municipalities have to earn back their investment by selling serviced plots of land to the developers, but – depending on the outcome of the negotiations – they do not have full certainty about the demand for land by developers nor about the price developers are willing to pay. And finally, the public land development model causes reduced transparency on the land market. This is because all the parties, whether public or private, demand confidentiality as a condition for the bargaining. This is not good for the accountability which a public agency should be able to demonstrate.

A debate has emerged regarding whether municipalities should adjust their strategies to the changing market circumstances (Needham, 2007; van der Krabben and Needham, 2008; Buitelaar et al., 2008; VROM Raad, 2009; Buitelaar, 2010). So far four alternative strategies have been proposed to overcome the above problems. First, Buitelaar et al. (2008) have suggested that municipalities should adopt a more *ownership sensitive* redevelopment strategy: the content of plans could be adjusted to the ownership situation instead of adjusting the ownership situation to be able to implement the plan. In other words, properties that cannot be acquired easily, could be excluded from the redevelopment project.

Second, several changes in the current – recently implemented – regulation with respect to cost recovery and development gains are already under consideration by the Ministry of Spatial Planning (VROM Raad, 2009). One suggestion has been to change the expropriation law (expropriation against *existing use value* instead of *market value*, thus excluding the impact of hope values). Another proposal has been to tax development gains that occur after land use change. It is anticipated that these kinds of changes in planning law will improve public land development, because the attractiveness of private ownership of land will diminish. However, even in the Dutch planners' paradise, planning law will not easily be changed in this way, because of the considerable impact on private property rights.

Third, urban land readjustment, as we have described it in "Alternative land development models" section, has been suggested as a new tool in the Netherlands for urban redevelopment projects, following planning practice in countries like France (Renard, 2009), Germany (Davy, 2007) and Israel (Alterman, 2007; van der Krabben and Needham, 2008). We discuss this further in "Concluding remarks" section.

Fourth, perhaps the most obvious way to deal with these problems is to abandon the public land development strategy and to allow more private initiatives for urban redevelopment. As is argued above, the Dutch Land Development Act – though so far 'interpreted' in a different way – legally guarantees recovery of the costs of public works in such private sector-led redevelopment projects, without the public ownership of land.

Concluding remarks

Though the context for planning may be quite different than that of other countries, the experiences of the Dutch are nevertheless worth examining. With respect to the need for *cost recovery* for public infrastructure investment, taxation might be a better – and less risky – approach. The popularity of tax increment financing (TIF) shows the wide use of this tool in the U.S. With respect to the argument that the private sector might fail to provide for a sufficient supply of building land, we find ourselves agreeing with Lefcoe that there is no guarantee that local governments would do a better job in predicting consumer demand. Moreover, there is not much evidence in the U.S. that the private sector fails to produce market-rate building land whenever there is a need for it (though

land for social housing is another matter). However, with respect to the *pro-active planning argument*, we believe that, particularly in the case of brownfield redevelopment, public sector land development can be and is proving to be an effective tool for American planning, in combination with other public sector interventions, like reducing liability risks related to clean-up costs, property-tax forgiveness, tax-increment financing, and development bonds (Minkus, 2007). Some have indeed commented that, in situations that the private sector does not take any initiatives for (re)development, land banking strategies, directed to the acquisition of vacant, abandoned, and tax-delinquent properties in blighted areas, are effective tools for the renewal of urban land (Howland, 2003; Alexander, 2005; Dewar, 2006; Minkus, 2007).

Apart from land banking strategies for brownfield redevelopment projects, forms of land assembly and land banking can also be effective tools in providing inexpensive land for affordable housing. Alterman (2009) provides an extensive overview of all the land-policy instruments that governments may use to recapture the "unearned increment" in land values created by public planning decisions. In addition to instruments like tax increment financing (TIF) and inclusionary housing programs (see Calavita and Mallach, 2009 for an overview of American experiences), public land development policies have proven able to 'produce' affordable housing in large quantities at below-market rates, in the Netherlands, but also in Sweden and Finland (Alterman, 2009, p. 11). Alterman argues, however, that '(w)hile land banking is still a possible instrument to consider, it is unlikely to be newly popular on a large scale among national and local governments' (and she was writing before the current economic recession). Instead, Alterman (2009, p. 12) suggests land readjustment as a much more promising tool that enables government authorities to "reshuffle" the current division of land plots, and assign landowners new plots (see also Alterman, 2007; Hong and Needham, 2007). This land policy tool is available in a variety of countries, both in Asia and in Europe (but not in the Netherlands). van der Krabben and Needham (2008) suggest the use of this tool for Dutch municipalities. Liebmann (1998) has suggested land readjustment as an appropriate tool for American cities and has even provided a proposal for a model statute (see also Shultz and Schmidman, 1990; cited in Liebmann, 1998; Heller and Hills, 2008).

What can be concluded from this assessment of the Dutch experiences with public land development? We divide our conclusions into two: one regarding the use of the model by Dutch cities and one regarding its possible use by American cities.

The discussion of the Dutch experience with public land development since the 1990s show that there are four main 'shortcomings' of the model. First, once private developers find out that land assembly can be a very effective strategy to achieve their housebuilding goals, local governments lack the appropriate powers to continue their public land development strategy efficiently. Second, the 'two hats dilemma' – when municipalities favor financial or economic considerations over spatial planning goals – may be an obstacle to good planning.⁸ Third, the application of a public land development strategy in urban redevelopment projects increasingly reveals the inability of the strategy to recoup all the costs of public works. Finally, there is recent evidence that municipalities face high financial risks in times of economic downturn. The most recent financial and economic crisis and the

⁸ Though beyond the scope of this paper, it should be mentioned that Dutch municipalities failed to distinguish properly between their different 'hats' with respect to industrial land policies in the past three decades, clearly demonstrating what can go wrong with municipalities wearing two hats (Needham and Louw, 2006; van der Krabben and Van Dinteren, 2010; van der Krabben and Buitelaar, 2011).

accompanying substantial drop in the demand for building land have already brought some of the larger Dutch cities into (deep) trouble.⁹

We believe that those developments show that the Dutch should reconsider their continued commitment to and use of the public land development model and be much more restrictive in its use. At the least, they should take better account of the risks involved, when deciding to use it.

Regarding the possible use of public land development strategies by American cities, a variety of factors dictate against its broad-based adoption. What there may be instead are specific circumstances that require a more pro-active approach to urban development. Those specific circumstances include the need for land banking strategies in blighted areas, the provision of affordable housing and the redevelopment of brownfield areas. Selective use of public land development – restricted to certain parts of brownfield areas and building on the strengths of private sector initiatives – may help to improve the effectiveness of American planning.

Is this recommendation any more feasible than those of the Presidential Commissions of the 1960s? Current conditions in the U.S. suggest no and perhaps. No, because the strength of conservative political voices put any appeal for government expenditures and use of government authority on the defensive (Jacobs, 2012). Perhaps, because as discussed in Jacobs and Bassett (2010, 2011) current fiscal conditions leave many localities open to exploring all alternatives to stabilizing their property tax base and generating property tax revenue. Despite the radical differences between the political economies of the two countries the core question of this paper remains relevant – what is an appropriate public role in planning in order to realize the public interest?

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⁹ Moreover, several newspapers have reported recently on the considerable losses some of the bigger Dutch cities made on their land development activities. Binnenlands Bestuur (2010) reports, for instance, financial losses over 2009 on land development in Rotterdam (€ 70 million), The Hague (€ 132 million) and Utrecht (€ 48 million). The City of Amsterdam still showed a positive results over the 2009 activities on the land market (€ 88 million), but has already reported expected losses over land development in the next years amounting to € 360 million.

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