Private-Private Cooperation in Urban Redevelopment Projects

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Key words:

urban land readjustment, private-private cooperation, the Netherlands

SUMMARY

Traditionally urban regeneration in the Netherlands has been based on either 'public-led' development projects, with the municipality in a leading role in the development, or public-private partnerships, with the municipality and one or more private developers closely working together in the development project. Usually, municipalities had (and still have) a very substantial role in these projects, not only in the planning process, but also in financial terms. For various reasons, the effectiveness of these development models is now being questioned. Many projects have come to a standstill. The on-going financial and economic crisis can partially be hold responsible for this, but shortcomings of the development models have been suggested as a cause of the problems as well (Buitelaar, 2011; Janssen-Jansen et al., 2012; Van der Krabben & Jacobs, 2013). Moreover, apart from the possible shortcomings, municipalities have now become very reluctant to take a role as investor to the extent they were used to. As an alternative development model private sector-led and private-private partnerships have been put forward (Heurkens, 2012). In the context of this paper, we define private-private partnerships as the collaboration of two or more private developers in an urban regeneration project, both in organisational and financial terms. Recently, the ministries responsible for planning in the Netherlands, in cooperation with several Dutch universities, have launched a national pilot program to experiment with innovative private-private partnership in urban regeneration. Ten pilot projects have been selected as part of this program.

This paper takes the Netherlands as an example how useful it can be for Western European cities to move away from the traditional patterns of real estate development and introduce innovative development strategies, based on new forms of partnership between the private and public sector. It is argued that private sector-led development strategies and private-private cooperation, like urban land readjustment strategies, may offer a new élan to urban transformation, but must go hand-in-hand with strategic planning policies that promote the redevelopment of 'previously developed land' and reduce urban sprawl.

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1. INTRODUCTION

In most Western European countries real estate development increasingly takes place in existing urban areas. Many 'mature' European cities have undergone enormous expansions in the period after World War II and increasingly now face the need to renew, revitalize and redevelop industrial brownfields, blighted inner city areas, post-war residential neighbourhoods, obsolete shopping malls, etc. This has led to an ever-increasing number of infill, urban redevelopment and brownfield redevelopment projects. Studies in nearby England and Scotland, with similar demographic-economic conditions as Western European countries, reveal that between 2000 and 2008 already around 65% of all new residential developments took place on previously developed land (Adams *et al.*, 2010). Many studies have shown that these types of projects are, however, not without problems, due to relatively high development costs (including demolishment costs, costs of cleaning contaminated land), ineffective land management tools for municipalities (often originally intended for greenfield development) (Van der Krabben & Halleux, 2011) and problems with fragmented ownership and related hold-out problems (Adams *et al.*, 2001; Buitelaar et al., 2008). Hold-out problems refer to situations in urban transformation areas with fragmented landownership where the necessary acquisition of land and properties is delayed or impeded by a minority of owners that refuse to sell. Expropriation of these owners by the municipality may overcome this problem, but often involves lengthy procedures, while success is not always guaranteed.

In an international context, real estate (re)development strategies – this is: land assembly, construction and financing of public infrastructure, building construction and real estate finance – appear to be to a large extent 'path dependent' and institutionally and culturally defined. Ball refers to these (differences in) 'practices' as 'structures of building provision' (Ball, 1998). This chapter will address Western European approaches to real estate development, with special attention for the Dutch case. More precisely, the chapter primarily concentrates on strategies for land assembly, (the financing of) public infrastructure provision and property development and the interplay between the public sector and the private sector development industry, but leaves aside, for practical reasons, the role of the building construction industry and the role of the finance sector. The main research question that will be addressed is: what can be effective land and property development strategies for the implementation of urban development projects (e.g. urban transformation, greenfield and brownfield development, city centre renewal, new housing schemes, commercial development, etc.)?

While the Dutch for a long time followed their own path in land and property development, they have now broadened their scope to alternative approaches. One might argue that they are forced to do so by changing market conditions on the one hand, and a different, neoliberal political attitude towards the role of the public sector in planning and property development on the other hand. At once, 'shopping' for effective development strategies in neighbouring countries seems to have become attractive, as numerous European comparative studies by Dutch authors in recent years indicate (e.g. Buitelaar, 2007; Janssen-Jansen et al., 2008;

Hobma et al., 2008; Tira et al., 2011; Heurkens, 2012; Van der Krabben & Jacobs, 2013). So, by analysing the Dutch case, we will pay attention to alternative real estate development strategies used in other parts of Europe; particularly those that seem attractive to the Dutch as an alternative to their public land development model.

The structure of the paper is as follows. Section 2 provides some general insights in the process of land and property development and the strategies and tools for both public and private parties to make use of in that process. Section 3 pays attention to the current situation in the Netherlands: the advantages of and problems with the public land development model and the search for alternative development strategies that, preferably, should serve as 'income models' as well. Section 4 pays attention to the spatial patterns of Dutch cities that are the result of these strategies. Section 5 presents three alternative private sector-led development strategies: a strategy that 'invites' incremental, piecemeal development (as part of a larger vision on the transformation of urban areas), a strategy based on a concession by the local authorities to a private developer, and an urban land readjustment strategy facilitating private-private cooperation. Finally, section 6 discusses outcomes and critiques of real estate development in the Netherlands.

2. WESTERN EUROPEAN APPROACHES TO LAND AND PROPERTY DEVELOPMENT

Land use planning and real estate development are closely related to each other. As a public intervention, land use planning often influences private sector real estate investment. For instance, urban containment do not only prevent urban sprawl, but may also create scarcity on land markets and affect profit rates of real estate investment. At the same time, the implementation of public sector planning goals usually depends on the ability and willingness of the private sector to invest in line with the public sector's goals. For instance, public authorities may want to transform brownfields, but rely on private sector initiatives for the implementation of such a policy. Land use planning, in Western Europe and elsewhere, can usually be related to three different intervention levels: strategic planning, regulatory planning, and operational planning (Van der Krabben & Halleux, 2011). What we are mainly interested in here, in the context of this book, is the operational planning level. It concerns the government strategies (or: land management strategies) that are used to implement certain developments (i.e. a residential development; an urban transformation project, etc.) (ibid, p. 47).When it comes to land management, the effectiveness of a strategy depends on the extent to which it contributes to realizing public planning goals, the way land assembly takes place and the possibilities for cost recovery of public infrastructure provision.

In Van der Krabben & Jacobs (2013) we distinguish four main groups of models, to be divided in land assembly models and land readjustment models. These four groups of development models are not only limited to Western Europe, but can be found globally in different institutional settings and in almost every country in a different way applied. Land assembly models require an 'outsider' who will assemble land from different landowners and takes the initiative for development. This outsider may be a public (municipality or public land development agency) or private (private developer) organisation. With respect to the public development model we may distinguish between a public comprehensive top-down model (Dutch public land development; see section 3) and a public planning-led quasi market model (a public agency purchases the land to make it available for (re)development by the private sector). Private development, with the initiative taken by a private developer, usually only requires a facilitating role for a municipality (i.e. adjustment of land use plan; approval of building permit: see section 5). Urban land readjustment, on the contrary, starts with the initiative taken by the owners of land and property in a certain area and enables a certain way of cooperation (by the exchange of ownership rights; see section 5). In all development models a certain way of cost recovery of public infrastructure works – usually referred to as value capturing – is required. Value capturing has been the subject of many ideological and political debates (see for instance Alterman, 2012), but this chapter looks at it from a pragmatic perspective (the planning instruments that can be used for cost recovery).

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
Land assembly models				
Public comprehensive top-down model	Public purchase and development of land in ready-to-build-on building plots, as a pro-active way to implement public policies, to realize cost recovery of public works and to capture part of the surplus value of the land	To implement a local-authority-driven development program, in close relation to public planning goals	Public body acquires all land that is needed	Cost recovery and value capturing via the sale of building plots
Public planning-led quasi market model	Public purchase of land (and vacant properties), to enable the (re)development of a specific area	To achieve a (re)development program for a specific area	Public body acquires all the land that is needed	Cost recovery via developer contributions; no value capturing
Private market model	Private purchase of land (and vacant properties, to enable the (re)development of a specific area	To achieve a (re)development program for a specific area	Private developer acquires all the land that is needed	Cost recovery via developer contributions; no value capturing
Land readjustment models				
Urban land readjustment	Owners of land and property exchange ownership rights over land, to enable the reparceling of the land into suitable building plots (according to the proposed (re)development of a specific area	To achieve a (re)development program for a specific area	Temporary transfer of land rights to a self-governing body for (re)development	Cost recovery via a contribution by the self-governing body for (re)development; no value capturing

Source: Van der Krabben & Jacobs (2013) (slightly reworked for this chapter)

In a recent EU-funded research project of land management strategies for urban transformation, with over twenty European countries participating, we found substantial international differences with respect to which development strategy is used and how it is used (Tira et al., 2011). These differences often depend on the legal environment for real estate development (i.e. expropriation powers and pre-emption rights for municipalities, regulation for cost recovery and value capturing, land use planning laws and building permit practices), but also have to do with fiscal issues (i.e. tax base for municipalities) and public finance regulation (i.e. to what extent are municipalities allowed to invest in land development). These legal differences may explain to a large extent the many differences in Western European countries with respect to planning and real estate development practices. However, in this chapter it is argued that there usually is an element of path dependency in planning and real estate development strategies applied in a certain country as well, sometimes leading to suboptimal outcomes (Needham & Louw, 2006; and see section 3). This path dependency often prevents *policy transfer* of certain successful real estate development strategies from one country to another country. It may be worthwhile, however, to look for opportunities to 'copy' effective strategies from neighbouring countries by drawing lessons from other countries, taking into account contextual differences.

3. DUTCH PUBLIC LAND DEVELOPMENT

This section focuses on the Dutch public land development model, as an example of a public comprehensive top-down model (table 1). With regard to land and property development, both Dutch municipalities and the Dutch private development industry have, for a long time, relied on the rather unique public land development model. A public land development strategy, as it is applied by Dutch cities, 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. Private developers and/or end users can buy ready-to-build-on land to build houses, commercial real estate or industrial buildings. Dutch municipalities preferred the model, because '(t)his 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 of the land (after a change in use)' (Van der Krabben & Jacobs, 2013, p. 774). The private sector appreciated the model as well, because it guaranteed them high-quality development locations and it reduced their development risks. Most private developers in the Netherlands argued that their primary aim is to build new houses (and other real estate) instead of developing land.

One (unexpected) exception to this common practice in the Netherlands, however, occurred in the 1990s. To meet the huge demand for new owner-occupied housing in the 1990s the national government implemented a national housing program (the VINEX program) and stimulated local authorities all over the country to develop large greenfield housing schemes (between 5,000 and 25,000 houses in one housing scheme; they are referred to as 'VINEX locations'). Municipalities decided on the locations for these housing schemes and immediately private developers, driven by the strong demand for new houses and increasing housing prices, started to buy land in these locations. Private developers, however, did not intend to develop this land themselves. Their interest was in building houses on it and they still preferred ready-to-build-on building plots supplied by the municipalities. Municipalities still favoured the integrated development of the location as a whole and didn't like the idea of individual private developers each developing their own location. The result of all this was a new development strategy, called the 'building rights model' (Priemus & Louw, 2003; Verhage, 2003; Needham, 2007): developers agreed to sell their land to the municipality; the municipality (alone or in a public-private partnership with one or two private developers holding a land position) took care of servicing the land, putting in the infrastructure and re-parcelling it into building plots. The land-holding private developers in turn received a building right, giving them the first right to buy serviced land from the municipality (in an amount that equalled the size of the land that they had sold to the municipality). And municipalities could continue with their public land development strategy.

In many other countries public land development models exist as well, but usually the goals and perspectives are different. In the Netherlands public land development must be seen 'as a way to implement a local-authority-driven development program for a whole city' (Van der Krabben & Jacobs, 2013, p. 774). In fact, it has served for a long time as the main tool for municipalities to achieve their planning goals. From a financial perspective, the strategy provided a very effective basis for public land value capturing covering more or less all the costs of both plan-related public infrastructure works and also additional infrastructure costs (e.g. ring roads, recreational grounds) (Van der Krabben & Needham, 2008). This was attractive to Dutch municipalities, because their tax base for financing public infrastructure costs from (property) tax income is rather small. In other countries, local authorities may make use of forms of public land banking, which involves land assembly by the public sector and the sale of unserviced land to the private sector in a certain area, usually to enable a private sector-led (re)development program for that specific area.

From 2009 'cracks in the myth' of the Dutch public land development model occurred (Buitelaar, 2010), mainly due to the global economic and real estate market crisis. Similar to other Western European countries, this crisis hit the Dutch housing and commercial real estate market hard. Demand for new housing and commercial real estate dropped and both the public and the private sector suffered (and still suffer). Public land development suddenly appeared to be less effective as a development strategy (Van der Krabben, 2011). And what most municipalities seemed to have neglected was that public land development has some considerable financial risks to it. For their investments in acquiring land and servicing the land municipalities must borrow money (which used to be secured easily, provided by the *Bank Nederlandse Gemeenten*: a bank exclusively operating on behalf of municipalities) and for this loan they have to pay interest. This used to be no problem, since the municipalities were able to pay back their loans by selling building plots, mainly to private developers. However, with the collapse of the housing market private developers immediately lost their interest in buying more building plots, with the result that municipalities couldn't make money anymore at the rate that they had anticipated before. Moreover, at the same time housing prices began to decline as well resulting in lower market prices for building plots. From the first quarter of 2008 until 2013 housing prices in the Netherlands have dropped 19% (The Economist, 2013). All of a sudden, municipalities began losing millions of euros on their investments in land they had already bought for future developments. For many of the VINEX and other locations serious delays have occurred in the development, while for other locations it has become clear that they will never be developed anymore.

Although there are regional differences in the conditions of the housing market and some municipalities suffer more than others (depending how they had calculated their risks before), more or less all Dutch municipalities have suffered and are still suffering from this. In total it is now expected that municipalities all together may lose perhaps four billion euros, already bringing some of them close to bankruptcy (Deloitte, 2012). However, nobody knows how long the problems may continue and the losses may even increase. At the same time, the private development industry is suffering as well. Although private developers stopped buying more building plots, many of them had already bought building land from municipalities just before the demand for new housing collapsed, but could not build houses on them. As a result, they were confronted with huge losses on their investments and had to downsize their operations substantially.

4. THE RATIONALE BEHIND PUBLIC LAND DEVELOPMENT

One of the rationales for using the public land development model is the Dutch preference for very precisely planned 'integrated' or comprehensive developments based on a blueprint plan that prescribes every detail of the development. This was introduced as a strategy in the 1950s and 1960s when there was a huge demand for new housing and industrial sites and the government wanted to make sure that sufficient locations would be available for development. Another reason behind the strategy is the underlying planning goal, to be very careful with using available space in a small and densely populated country as the Netherlands (Needham, 2007). National planning policies prescribed the development of the VINEX locations in the vicinity of the existing cities and to build in high densities (30 to 35 houses per hectare). Although in principle everybody can buy agricultural land or previously built on land with the intention to use that land to build on it, as long as it fits the land use plan for that location, usually only municipalities do. As we discussed in the previous section, private developers only started to acquire land after municipalities announced the development of the VINEX locations. Private developers have always been very careful with buying land in advance, because they must fear that the municipality will not cooperate by adjusting the land use plan to the planned development and consequently denies the request for a building permit. Municipalities prefer to stick to their own development plans. For a long time unsolicited proposals by the private sector, which are common practice for instance in the UK, were not welcomed by municipalities. Another effect of this preference for comprehensive plans used to be that it became almost impossible for individual households in the Netherlands to buy a plot of (unserviced) land to build a house on it (as is common practice in for instance Belgium and large parts of Germany).

The Dutch reliance on public land development seems to be a typical example of path dependency in public policies and market behaviour. For a long time, the development model did what it was supposed to do. The strategic decisions by private developers to buy land in the VINEX locations delayed the process of developing these locations, due to long negotiations between municipalities and private developers, but the issue was 'solved' by introducing the building rights model. Generally speaking, land for property development usually was available at the right place, against reasonable prices, at the right time. All VINEX locations have a mix of owner-occupied housing and social housing. Private developers build the owner-occupied houses and sell them to households; housing corporations build the social housing and let their units to households that fulfil the (income) criteria. Moreover, the development locations came with high-quality standards, with all kinds of public services available and the necessary infrastructure in place. And everybody seemed to be happy with this: municipalities were able to implement both their planning and housing policies, housing corporations could build a sufficient amount of social housing, private developers were able to build houses on high-quality locations and accepted the mix of the houses they built with social housing, and those families looking for a new house were happy to buy the houses that were offered to them in the VINEX locations.

This situation lasted until 2009. The 'cracks in the myth' have now become a real break with the past. Dutch municipalities cannot simply stop with public land development, since in many cases they have no choice than continuing with developing locations in which they already have invested. However, for new developments they have become increasingly interested in alternative development strategies.

5. PRIVATE SECTOR-LED DEVELOPMENT: ORGANIC DEVELOPMENT, CONCESSIONS, URBAN LAND READJUSTMENT

In the context of reduced effectiveness (and increased financial risks) of the public land development model, Dutch municipalities have started to search for alternative, less risky, development strategies that are more commonly used in other Western European countries and in the UK. This section discusses three of those alternative strategies that are currently discussed in the Netherlands, respectively a strategy that 'invites' private sector-led incremental, piecemeal development (as part of a vision of the municipality on the transformation of an urban area), a strategy based on a concession of the local authorities to a private developer, and urban land readjustment based on private-private cooperation. These strategies have in common that the property development industry takes the lead, while municipalities facilitate the private sector initiative (Heurkens, 2012). It extends the influence of the property development industry over real estate development. Nevertheless, local authorities still play a significant role in shaping the decision environment of the private sector including decisions made by property developers, investors and corporations. As a result, active land development policies with municipalities taking development risks (by participating in public-private partnerships such as joint ventures) are likely to be less used in the future (Heurkens, 2012). As such, private sector-led development marks a shift in the Dutch public-led planning and development tradition as proclaimed by Faludi and Van der Valk (1994).

Private sector-led incremental, piecemeal development

As discussed above, the Dutch planning tradition has always been based on a comprehensive, very precisely planned integrated development strategy. As an alternative it has been suggested to introduce an incremental, piecemeal development strategy in which the municipality develops a broad vision on the (re)development of a certain location (as opposed to a *blue print vision* usually underlying the integrated development plans) and 'invites' the private sector to develop plans that fit in the broad vision for the locations (RLI, 2011; Peek & Van Remmen, 2012; PBL & Urhahn Urban Design, 2012). The private sector initiatives may concern small developments situated in the (re)development location and do not have to cover the whole location. In the Netherlands, this strategy is also referred to as *uitnodigingsplanologie* ('invitation planning'). The municipality announces, with the presentation of the broad vision, that it will facilitate initiatives that are in line with this vision. Incremental development strategies are, internationally, of course not a new phenomenon and even in the Netherlands this kind of development traditions go back to the Dutch *Golden Age* in the 17th century with the developments along the famous Amsterdam historic canals (PBL & Urhahn Urban Design, 2012). They should not be seen as a *laissez-faire* model, but often take place within a strict legal framework. The *grid structure* development of many North American cities can be seen as an example of this strategy as well *(Ibid,* 2012). However, as argued by PBL & Urhahn Urban Design, a smooth transition to this alternative development strategy in the current (legal) planning context in the Netherlands still requires some adaptations both in *municipal planning traditions* and in

planning law.
First, PBL & Urhahn Urban Design argue that municipalities must adjust their plans and the way they used their plans before: from a detailed blue print plan towards a broad programmatic vision for the location with a target program per market segment (target number of houses to be built, target amount of office space to be developed, etcetera) (p. 12). Municipalities used to be quite certain about the implementation of their plans before, because the blue print plans usually were the result of a public-private arrangement (between the municipality and a private developer) that 'guaranteed' the implementation. With an incremental development strategy they cannot be sure anymore and must rely on the initiatives of others.
Second, municipalities will have to adjust their role in the planning and development process: from *project management* (implementation of clear targets) to *process management* (facilitating private sector initiatives) (p. 12-13). As argued in Heurkens (2012; 2013), Dutch municipalities face the challenge of adjusting their organisational and managerial capabilities towards market-oriented development practices. Adams and Tiesdell (2010) indicate that this role change involves municipalities to effectively shape, regulate, stimulate and build capacity for private development initiatives. This moves away from planners being mainly focused on implementing public policies themselves through project management activities. Therefore, informal relations with the development industry need to be built by participating in market networks, and developing negotiation skills to achieve developer contributions in real estate development projects. This is something Dutch planners are not used to and will take time to change due to the established institutional culture of public-led development within municipalities.
Third, in the Dutch context, there will be consequences for value capturing (or: *cost recovery of public infrastructure works*, as it is called in the Netherlands) (p. 13). One of the advantages of the public land development model used to be that municipalities could cover all or most of the costs of public infrastructure works (including roads, public space, sewage systems) that are necessary for the intended (re)development location), provided that they were able to sell the building land. These public works usually can be divided in direct plan-related public works and indirect 'overarching' public works (like a ring road, a motorway access road, additional public transport services, etc.) Cost recovery of public works, including (part of) these overarching public works, is guaranteed by Dutch planning law, but is restricted by the profitability of the development: if value capturing would result in a loss for the private developer, obviously the development will not take place. With an integrated development strategy municipalities were able to 'combine' financially both profitable and less-profitable projects, which gave the best chance to cover the costs of all public works. With a variety of smaller projects, PBL & Urhahn Urban Design warn that value capturing for the indirect overarching public works may become difficult, because they may not be foreseen anymore in the master plan and/or because some of the smaller, less profitable projects will not allow value capturing anymore. Perhaps alternative financing mechanisms, like the use of property tax income, should be considered for funding parts of the public works.
Finally, PBL & Urhahn Urban Design suggest that adjustments in Dutch planning law are necessary. Planning law in the Netherlands is 'designed' to support the pro-active integrated development strategies of Dutch municipalities and assumes that the detailed implementation of the master plan is decided before the implementation process will start. Adjustments to the plan are possible, but require difficult and lengthy procedures. In short, Dutch planning law at

present lacks a certain degree of flexibility to deal with the uncertain future related to incremental development strategies.

To summarize, the efficient introduction of incremental development strategies in the Dutch planning doctrine requires on the one hand a change of attitude of both the public and the private sector (see Heurkens, 2013), and on the other hand the introduction of increased flexibility in planning procedures. The change of attitude seems to be taking place right now. The introduction of increased flexibility in planning procedures requires adjustments to planning law and therefore takes more time. However, although nothing has been decided yet, current public planning debates already seem to point in that direction.

Private sector-led urban development: Concession model

Heurkens (2012) refers to, among other things, violations of EU legislation in his critical assessment of Dutch urban development practice based on the public sector-led urban development model, as it has been described in section 3, and the common public-private partnership arrangements that are part of this model. As has been explained above, the implementation of integrated detailed master plans in Dutch planning and development practice is often based on public-private partnership contracts, with the municipality closely working together with one or more private developers. The European Commission (2004; cited in Heurkens, 2012) 'has expressed its concerns about the somewhat non-transparent public-private cooperation in Dutch urban development practice'. Heurkens (2012, p. 29) provides five different arguments why this practice is assessed critically from EU law perspective.

First, Heurkens (2012) argues that 'public-private entities like the single corporate body in the joint ventures in the Netherlands in the initiative phase of a development often are formed without a clear competition among property developers' (p. 29). Partnerships are often based on landownership by the private developer in the (re)development location. Second, often the tender procedure is unclear: 'the European Commission (2004) has frequently diagnosed that the tasks appointed to public and private parties within the single corporate body are defined inaccurately (…)' (p. 29). Third, the participation of the public sector in public-private partnerships, together with its formal role in planning procedures, creates the so-called 'double-hat dilemma'. 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 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 not for the financial results of their participation in a public-private partnership. Heurkens argues that this creates frictions with EU principles regarding both public legitimacy and public financial risks. Fourth, Heurkens (2012) argues that '(c)urrent Dutch PPP practice can be contradictive to the statement of the European Court of Justice (C-220/05) that close financial involvement of municipalities in urban development projects, which are meant to be brought on the market, may well be in conflict with *public procurement rules*' (p. 29). Finally, Heurkens mentions (referring to Bregman, 2010) the recent Muller judgment by the European Court of Justice (C-451/08), which implies a clear role division by law (in which public bodies operate within the public domain and developers within the private domain), while, again, Dutch public-private development models might be in conflict with that.

Heurkens argues that this critical EU attitude, in combination with additional arguments (see

Heurkens, 2012: Chapter One) constitutes a good reason to look instead for private sector-led development strategies. Both the Dutch experiences with what is referred to in the Netherlands as the *concession model* and UK experiences with private sector-led development strategies may serve as good examples here. Gijzen (2009; cited in Heurkens) defines the concession model as follows: '(a) concession in urban area development is a contract form with clear preconditioned agreements between public and private parties, in which a conscious choice from public parties has been made to transfer risks, revenues, and responsibilities for plan development, land preparation, land and real estate development and possible operation for the entire development plan towards private parties, within a previously defined public brief in which the objective is to create an effective task division and a clear separation of public and private responsibilities'.

Although still sort of a niche development strategy, since 2000 the concession model has increasingly been applied in Dutch urban development projects. These projects are based on a clear contractual division of tasks and responsibilities between the public and the private sector and are thus different from 'traditional' public-private partnership arrangements. Heurkens claims that the Dutch can learn from UK planning and development practice where this always has been the case and the public sector has always relied on private sector initiatives (due to a lack of public funds and the lack of public planning authority to take the initiative itself). Differences in the institutional planning context may prevent direct policy transfer of the UK private sector-led development model to the Netherlands.

However, Heurkens shows that there are no insurmountable barriers to concession-based private sector-led development in the Netherlands, other than municipalities loosing part of their control over the detailed implementation of their master plans. Nonetheless, this form of development does require that the Dutch development industry takes some necessary steps towards more long-term commitment role in real estate development projects (Putman, 2010; Heurkens, 2012). This involves approaching development as an investment which might include the managerial and financial operation of the estate. Importantly, there is no such tradition in the Dutch development industry, but recent projects such as A12 Zone in Utrecht indicate that long-term investment and commitment by a coalition of private companies seems is gaining ground in the Dutch development practice.

Urban land readjustment

Also in response to the problems of the municipalities with the public land development model, the Dutch national government has recently launched a national pilot program to test the effectiveness of urban land readjustment as an alternative, *property owners-led strategic tool for urban redevelopment projects*. In this strategy, the initiative is with the owners of land and property that are already present in the development location, while municipalities play a facilitating role. Urban land readjustment, also referred to as 'land pooling', has been defined as the consolidation of adjoining plots 'by a government agency for their unified planning, servicing and subdivision with the sale of some of the new plots for cost recovery and the redistribution of other plots to the landowners' (Archer, 1989: 307; cited in Adams & Tiesdell, 2013: 274). Urban land readjustment has been widely adopted both in European countries (e.g. in Germany and Spain) and in Asian countries (e.g. in Japan, South Korea and Taiwan; and see Doebele, 1982; Hong & Needham, 2007). Adams *et al.* (2001) have also proposed urban land readjustment for the UK, termed an 'urban partnership zone'. Urban land readjustment, as a strategy, is more or less similar to more common agricultural land readjustment strategies, but now applied in an urban context, In the Netherlands, where agricultural land readjustment was and still is common practice to increase farmers' efficiency in using their land, urban land readjustment has been discussed for many years (Bregman & De Wolff, 2011; Geuting, 2011), but the political pressure to implement it was lacking (because public land development was still an effective strategy at that time).

In Van der Krabben & Needham (2008) we have argued the theoretical case for applying urban land readjustment in the Netherlands and elsewhere. Urban land readjustment is believed to be useful for urban transformation projects:

- that require an integrated development approach, with a proposed grid that is different from the current situation;
- that are characterized by fragmented land ownership;
- that brings together several land and property owners who are interested to participate in the urban transformation, but cannot operate on their own (because a re-parcelling of the land is requested);
- where neither a public agency nor a private developer (nor a public-private partnership) is willing to take the risk of acquiring all properties in the transformation area and take the initiative for redevelopment on its own.

In a case of urban land readjustment all property owners are invited to temporarily transfer the property rights of their properties to a self-governing body for the redevelopment, also referred to as the *urbanisator*. This urbanisator can be a special purpose vehicle established by the owners in the area or just one of the property owners. The land readjustment project can only take place when all property owners participate. The urbanisator will re-parcel the land into building plots that match the transformation project. Consequently, all owners will then again receive a building plot to build on. The value increase of the land as a result of the urban transformation will first be used to cover the public infrastructure costs. The remaining will go to the owners.

Now that public land development strategies have lost their attractiveness and fuelled by a neoliberal wind in politics, urban land readjustment has become appealing again in the Netherlands. Urban land readjustment particularly can support cooperation between several private land and property owners in a specific area without much interference of the public sector. In the Netherlands, as probably in most other countries, voluntarily land readjustment can already take place in the present institutional setting. However, the introduction of law is discussed to enable urban land readjustment processes in situations that a majority of owners would like to participate, but a minority refuses to. It should be possible in such cases to implement urban land readjustment based on a majority vote, at least if the foreseen transformation of the area fits with public policy goals. The refusing minority must then accept this and could be expropriated if they are not willing to participate (and must be fully compensated for losing their properties). In situations where the instrument of active land policy is considered inappropriate, urban land readjustment can be a useful alternative. The recently launched national pilot program should provide the arguments for introducing a new planning law that would enable such expropriation based on a land readjustment plan for a certain area.

6. CONCLUSIONS: DIFFERENT STRATEGIES TO REACH THE SAME GOALS?

Despite the profound changes occurring in the Dutch real estate development, substantial debate about its possible outcomes seems to be absent. For decades the Dutch spatial planning doctrine with its well-coordinated plans resulted in comprehensive urban projects in which private real estate developments became closely linked with substantial provisions of public infrastructure and public space. Since the coordination of real estate development by public authorities seem to become less prominent, however, questions may be raised about how cities respond to the challenges they face. Do strategies explained in the previous section join up public and private interests for instance? This changed public-private balance and the introduction of new development strategies and instruments in real estate development offers opportunities to reconsider the definition of public interest in planning. Heurkens (2012) argues that in this new context its seems appropriate to determine public interests for particular places through the involvement of the private sector and communities, as to what can be considered 'public' is not a privilege of one agency alone i.e. public authorities. The development strategy examples in previous sections already take into account mechanisms to balance public-private interests, and might prove to be effective in achieving satisfying outcomes for public, private and civil agencies. Moreover, as suggested these strategies need to be accompanied by spatial policies to coordinate development.

In this context 'smart' governance strategies are required – both at strategic planning level and at project level – to create attractive conditions for the development industry and for land and property owners to invest in urban transformation. For instance, cities can increase the attractiveness for the private sector to invest in urban transformation projects, 'simply' by reducing greenfield development opportunities at the outskirts of the city. Real estate development is about public-private collective action and decision-making: cities may come with ambitious plans for urban regeneration, but need the private sector to invest, while the private sector may come with ambitious investment plans, but needs the public sector to create the planning conditions for this. Apart from creating attractive business cases for the private sector to invest, this chapter has argued that smart real estate development strategies at project level must also consist of efficient strategies for land assembly and be able to deal with fragmented land ownership and of value capturing strategies that must find the right balance between cost recovery of public infrastructure provision on the one hand, and reductions of the profitability of investments for the development industry on the other hand.

The on-going public debate in the Netherlands, where alternative development strategies have been suggested (and partly implemented already) to the dominant public sector-led development strategy, may serve as an example of how European cities in the future could make use of a *toolbox* with several development strategies and planning instruments for effective urban transformation. For this, local authorities and the private sector must perhaps abandon traditional strategies and consider the implementation of alternative strategies. This toolbox could range from public sector-led to public-private partnership arrangements and to private sector-led strategies. It could include both comprehensive integrated detailed master plans and incremental development strategies that fit in a broad vision on the (re)development of a certain location. And it could take into account both 'bottom-up' collective initiatives by land and property owners in a certain area, facilitated by an urban land readjustment strategy, and 'outsider' private sector initiatives for urban transformation, facilitated for instance by a

concession model. These development strategies must always be accompanied by planning law and financial (value capturing) instruments (though certainly not every alternative development strategy requires a new law or new instruments).
For the Netherlands it would probably mean that local authorities will lose some of their control over development and leave the initiative to the private sector. For the private sector, it would mean that they must invest in an environment that is not completely ‘controlled’ anymore by the public sector. Perhaps, in the Netherlands the sense of urgency might help here for both the public and the private sector to explore new public-private and private-private partnerships in real estate development. The present status quo, with many projects stalled or delayed, means that both municipalities and private developers continue to lose money on their investments. In such a situation, alternative strategies and partnerships can perhaps be considered more easily. However, ‘smart’ real estate development strategies are not a remedy to projects being stalled that lack a demand for real estate. In these projects, fragmented ownership or ineffective value capturing strategies are not the real problem, but the unrealistic expectations about future demand (Janssen-Jansen *et al.*, 2013, p. 42). Moreover, time must tell whether new development strategies, hand-in-hand with strategic planning policies, also result in the redevelopment of ‘previously developed land’ and reduce urban sprawl.

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